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Message:

Exr. Olzewski,

I am faxing to you the entire set of documents that were faxed to Exr. Walsh on December 10, 2008 along with our fax confirmation sheet. Please contact me if any pages are missing.

Thanks,

Shawn O'Dowd

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Renewed Petition

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PTO/SB/97 (09-04)

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PATENT
Docket No. 77792/23

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MAR 10 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Koji SATO, et al.
Application No. 08/750,641
Filing Date : 16 December 1996
Title : SCHEDULE SETTING AND PROCESSING SYSTEM
Art Unit : Office of Petitions
Examiner : L. Walsh

ATTENTION: PETITIONS BRANCH

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RENEWED PETITION UNDER 37 CFR 1.137(b)

S I R:

This renewed petition is in response to the petition dismissal ("Dismissal") mailed by the USPTO on September 10, 2008.¹ The Dismissal indicated that Applicants' original petition filed August 6, 2008 ("Original Petition") lacked a "required reply" and "a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." (Dismissal at 1.) The Dismissal also indicated that "there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional." (*Id.*) Accordingly, the Dismissal requested further information as to "the delay in reply that originally resulted in the abandonment" and "the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application."

¹ A petition for a one month extension of time under 37 CFR 1.316(a) is enclosed, thus extending the due date of this Renewed Petition to December 10, 2008.

While this renewed petition does provide such further information, because of the circumstances surrounding the abandonment of '641, the USPTO should exercise its discretion, and need not consider such additional information for the granting of this renewed petition under the unintentional standard of 37 CFR 1.137(b).

This Renewed Petition Meets At Least the Minimum Requirements Under 37 CFR 1.137(b).

As specified in the Dismissal:

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137 was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

(Dismissal at 1.)

As to minimum requirement (1), this renewed petition contains the "required reply," i.e., the payment of the issue fee for United States Application No. 08/750,641 ("641"), as well as replacement formal drawing sheets.²

Regarding minimum requirement (2), the proper petition fee was paid with the Original Petition.

Concerning minimum requirement (3), Applicants' affirmatively state that the entire delay in filing the required reply for '641 from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

As to minimum requirement (4), '641, a utility application, was filed after June 8, 1995, and is thus not subject to the terminal disclaimer requirement.

² Figures 1 and 13 are corrected by moving the legend to under the figure, as requested in the PTO-948. Figures 15(A) and 15(B) are corrected by moving the figure such that a 2.5 cm upper margin is obtained. Annotated original sheets are included, along with replacement sheets.

Accordingly, Applicants' respectfully submit that the minimum requirements for a grantable petition under 37 CFR 1.137(b) have been met, and that the USPTO should exercise its discretion in favor of granting this renewed petition.

There is no legal requirement that the USPTO consider additional information for the granting of this renewed petition.

37 CFR 1.137(b) specifies that "[t]he Director may require additional information where there is a question whether the delay was unintentional" (emphasis added). By the use of the term "may," 37 CFR 1.137(b) clearly indicates that there is no affirmative legal requirement for the USPTO to require additional information in any petition filed under the 1.137(b) unintentional standard, let alone, this renewed petition.

The MPEP indicates that Petitions Examiners have the discretion to require additional information for the granting of petitions under 37 CFR 1.137(b), but are not mandated to do so.

As set forth in MPEP 711.03(c)(III)(D), "[w]here a petition pursuant to 37 CFR 1.137(b) is not filed within 1 year of the date of abandonment of the application . . . the Office may require [further information and showings]" (emphasis added). This is in contrast to petitions filed under the unavoidable standard. For petitions filed under 37 CFR 1.137(a), MPEP 711.03(c)(III)(D) affirmatively states that the USPTO "will require" (emphasis added) further information and showings. Accordingly, a Petitions Examiner is clearly given the discretion as to whether additional information will need to be required and/or considered for petitions filed under the unintentional standard of 37 CFR 1.137(b).

Because Applicants filed a reply to a USPTO request within 1 year of the date of abandonment, the USPTO should withdraw its implicit holding that “there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional,” and should grant this renewed petition without the consideration of additional information.

As an Examination policy, the USPTO does not generally question whether there is intentional delay if a petition under 37 CFR 1.137(b) is filed within three months of the notification of abandonment and within one year of the date of abandonment. *See* MPEP 711.03(c)(III)(D). While the Original Petition was indeed filed over one year after the date of abandonment, as set forth below, Applicants did attempt to correspond with the USPTO at least six times within one year of the abandonment of the application on July 18, 2000, yet were unable to gain information from the USPTO that the ‘641 application had abandoned. (O’Dowd Decl. ¶¶ 33-44; Altmiller Decl. ¶¶ 14-19; Neblett Decl. ¶¶ 4-7.)

Following the filing of a Continued Prosecution Application (CPA) on March 15, 2000 (O’Dowd Decl. ¶ 21), and the filing of a Preliminary Amendment on March 29, 2000 (O’Dowd Decl. ¶ 23), Applicants failed to receive a Notice of Allowance mailed on April 17, 2000 (O’Dowd Decl. ¶ 26). As a result, the ‘641 application became abandoned as a matter of law on July 18, 2000. Presumably because of concerns that a USPTO response had not been received by Applicants, Kenyon & Kenyon LLP (“Kenyon”) began a series of contacts and correspondences with the USPTO.

For example, less than six months after the abandonment date, on January 12, 2001, Cathy Ryan at Kenyon learned from a “[c]onversation w/ group receptionist” that the USPTO file for ‘641 was reported lost on November 27, 2000, the last known destination for the file being “the file repository.” Cathy Ryan also left a message with Examiner O. Hernandez at 10:45 AM. The

Examiner called back at 2:45 “to verify that file is in Depository.” There is no evidence the Examiner informed Cathy Ryan of the abandoned status of the application.³ (O’Dowd Decl. ¶ 39.)

Less than one month later, on February 8, 2001, at least one Kenyon employee attempted to make copies of the file wrapper, but was informed that the file wrapper was lost. (See O’Dowd Decl. ¶ 40.) There is no evidence that this Kenyon employee was informed of the abandoned status of ‘641.

Less than nine months after the abandonment date, according to a paper and postcard retrieved from Kenyon’s files, a File Reconstruction request was stamped as received by “Licensing & Review” on March 23, 2001. (Neblett Decl. ¶¶ 5-7.) The paper indicates:

We have been informed by the Office that the U.S. Patent and Trademark Office’s file for [‘641] has been lost. Please find attached a copy of the relevant documents forming the file history for this application from the applicant’s files for use in reconstructing the Office’s file.

Please reconstruct the file. Thank you for your attention to this matter. Please contact [Mark H. Neblett (Reg. No. 42,028)], for any questions.

There is no evidence that the USPTO informed Applicants of the abandoned status of ‘641 in response to this submission.

Thus, at the time of these correspondences and communications, it was clear that Applicants’ were informed that the USPTO’s paper file was lost. (See *also* Neblett Decl. ¶ 4.) Concerned with the results and speed of the USPTO search, Applicants’ undertook the effort and cost of providing the USPTO with a copy of Applicants’ file history for ‘641. (Neblett Decl. ¶¶ 4-7.) After that step, Applicants’ reasonably believed that they had taken every step possible to move forward the prosecution of ‘641, and that the next step for moving forward the prosecution of ‘641 was in the USPTO’s hands.

³ Prior to this time, and after the date of abandonment, Kenyon filed three other correspondences during this general time period, all listing the correct address for Kenyon. (See O’Dowd Decl. ¶¶ 33-38.)

In light of the above, the USPTO should have no question that Applicants' made a good faith attempt to respond to known USPTO requirements within one year after the abandonment date. Applicants respectfully submit that such good faith efforts negate any USPTO presumption that a petition filed over one year after the date of abandonment requires the consideration of additional information. Accordingly, Applicants' respectfully request that the USPTO withdraw its implicit finding that "there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional," and grant this renewed petition without the consideration of additional information.

While it is Applicants' position that additional information need not be considered by the USPTO for the granting of this renewed petition, Applicants' have made a good faith effort to provide additional information to the extent required by the USPTO

The USPTO mailed a copy of the Dismissal to Applicants' on September 10, 2008. Applicants' attorneys had several questions regarding the Dismissal, and attempted to contact Examiner Walsh regarding the petition; however, Examiner Walsh was away from her usual examining functions for much of September and October (e.g., for extended training). On October 24, 2008, Applicants' attorneys were able to discuss the petition with Examiner Walsh. (O'Dowd Decl. ¶ 7.)

The primary concern of Applicants' was the Examiner's many requirements relating to "all persons . . . having firsthand knowledge of the circumstances surrounding the protracted delay," such as the requirement for statements and "[c]opies of any correspondence relating to the filing, or to not filing a further reply to the outstanding Office action." (See Dismissal at 2-3.) After a discussion with Examiner Walsh involving the facts and witnesses available to us at this time, Examiner Walsh indicated that especially in light of the fact that only the payment of an issue fee

was at issue in this case, it would not be necessary at this time to go to extraordinary measures to get statements from all persons having firsthand knowledge of the circumstances surrounding the delay. (O'Dowd Decl. ¶ 8.)

Nevertheless, Applicants have made extensive efforts in the preparation of this petition. Applicants have intensely examined the paper file wrapper of the '641 application to determine the identity of the various persons at Kenyon who worked on the prosecution of '641 application and to compile the many efforts by these Kenyon attorneys and staff to further prosecution of the '641 application. (See, e.g., O'Dowd Decl. ¶¶ 9-18.) This investigation included contacting several former Kenyon employees, including, *inter alia*, an attorney who was no longer engaged in the active practice of patent law, and an attorney who worked for a law firm in Tokyo, Japan. Through contacting these former Kenyon employees, Applicants are able to provide further detail regarding the events which ultimately resulted in the delay in this case.

A. Summary of Major Contributing Factors Causing Delay

The first major contributing factor to the delay was the first (and only) change of address of Kenyon's Washington, DC office in or about March of 1999.⁴ At that time, Kenyon moved its DC office from 1025 Connecticut Avenue, NW, to 1500 K Street, NW. (O'Dowd Decl. ¶ 19.) While Kenyon was eventually able to change the correspondence address for the many applications then handled by Kenyon's Washington, DC office, as of March of 2000, the USPTO

⁴ A March 1999 move date is partially evidenced by comparing Paper #8 and Paper #10 of the '641 application. Paper # 8, received by the USPTO on March 17, 1999, uses the 1025 Connecticut Avenue NW address. Paper #10, received by the USPTO on October 12, 1999, uses the 1500 K Street NW address. The March 1999 move date is also evidenced by the undeliverability of the April 17, 2000 Notice of Allowability (Paper #17), as evidenced by a paper stamped April 27, 2000 in the USPTO's '641 paper file. It is well known that the United States Postal Service (USPS) ceases the forwarding of mail one year after a move date. While Paper #17 was not forwarded to Kenyon's 1500 K Street NW address, an advisory action dated February 29, 2000 (Paper #13) was received by Kenyon, presumably from the USPS.

did not recognize the correspondence address of '641 as being 1500 K Street, NW.⁵

Correspondingly, as is clearly evidenced by a paper in the USPTO's paper file, Applicants did not receive a Notice of Allowability for '641 which was mailed on April 17, 2000 (Paper #16).

(O'Dowd Decl. ¶ 26.) Subsequently, the '641 application went abandoned, as evidenced by a Notice of Abandonment mailed by the USPTO on September 13, 2000 (Paper #17). (O'Dowd Decl. ¶ 30.)

A second major contributing factor to the delay was the departure of two key Kenyon attorneys in 2000. The Kenyon partner to whom '641 USPTO correspondence was addressed, Frank Pietrantonio, left employment with Kenyon on May 1, 2000. (O'Dowd Decl. ¶ 13.) In addition, the associate who appeared to have performed all of the prosecution work for '641, Sterlon Mason, left Kenyon on July 21, 2000. (O'Dowd Decl. ¶ 12.) The departure of these attorneys greatly reduced Kenyon's institutional knowledge regarding '641.

A third major contributing factor to the delay was the temporary loss of the '641 file by the USPTO. According to a note in Kenyon's '641 paper file, the USPTO reported the '641 file as lost on November 27, 2000. (O'Dowd Decl. ¶ 39.) Additional evidence that the '641 paper file was lost is provided by Paper #19 in the USPTO's '641 file wrapper, i.e., while the Change of Correspondence Address document given the designation of Paper #19 is dated October 30, 2000, it was not entered until June 12 of some undetermined year (presumably 2001, 2002, or 2003). Kenyon was orally informed of the loss of the '641 file on January 12, 2001. (O'Dowd Decl. ¶ 39.) To confirm the loss of the file, on or about February 8, 2001, at least one of two Kenyon staff members having a Power to Inspect and Make Copies (signed by John C. Altmiller) personally traveled to the USPTO in an unsuccessful attempt to inspect the USPTO paper file. (O'Dowd

⁵ However, by that time, Papers #10, 12, 14, and 15 had been filed bearing the 1500 K Street NW address.

Decl. ¶ 40.) Subsequently, a File Reconstruction request, including a copy of the application as filed, was provided on or about March 23, 2001 to the USPTO by Mark H. Neblett of Kenyon. (Neblett Decl. ¶¶ 5-7.)

A fourth major contributing factor to the delay was the failure of the USPTO to respond to two Status Inquiry requests filed by Kenyon attorneys. (O'Dowd Decl. ¶¶ 45-47, 52-53; Altmiller Decl. ¶ 22.) These requests were filed on September 8, 2003 (signed by John C. Altmiller) and on September 15, 2004 (signed by William Curry). (*Id.*)

A fifth major contributing factor to the delay was the allowance of most or all of the co-pending foreign applications related to '641. While these related foreign applications were pending, Kenyon would periodically receive prior art from these foreign prosecutions which triggered the necessity of filing an Information Disclosure Statement (IDS). For example, an IDS was filed by Kenyon on September 9, 2004 which provided "references cited in the European Search Report of a related European Patent Application." (*See* O'Dowd Decl. ¶51.) It is believed that the filing of this IDS prompted the filing of the September 15, 2004 status request by William Curry. (*See* O'Dowd Decl. ¶ 52.)

A sixth major contributing factor to the delay was the departure of William Curry and John C. Altmiller from Kenyon in early 2007. (*See* O'Dowd Decl. ¶¶ 54-55.) Again, institutional knowledge regarding '641 was lost to Applicants.

Finally, a seventh major contributing factor to the delay relates to the limitations of the electronic docketing system currently utilized by Kenyon. Kenyon's electronic docketing system categorized the loss of the file by the USPTO as "PTO lost file-awaiting OA." (Russo Decl. ¶ 5.) Such has been the status of '641 in Kenyon's electronic docketing system since at least July 15, 2002. (*Id.*) Such a status conveys to a prosecuting attorney, particularly a prosecuting attorney

having no prior knowledge of '641, that no action need be taken since the USPTO is attempting to find and/or reconstruct the file. (Russo Decl. ¶ 6.) Furthermore, because the attorney is only "awaiting" an office action, there is nothing in the description to prompt the attorney to take immediate action.

B. Statements Obtained by Applicants

Because of the circumstances surrounding the abandonment of '641, Examiner Walsh indicated to Applicants' representatives that at this time, statements from all persons having knowledge of the circumstances surrounding the delay would not be required. Nevertheless, Applicants' have obtained declarations from the following persons:

1. John C. Altmiller, a managing attorney of record for '641 from the date of its filing, until his retirement from Kenyon in 2007.
2. Mark H. Neblett, who filed a request to reconstruct the '641 file with the USPTO in March of 2001.
3. Judith M. Russo, the IP Support Coordinator for Kenyon's Washington, DC office.
4. Shawn W. O'Dowd, a managing partner for '641 from the date of John Altmiller's retirement from Kenyon in 2007.
5. Daniel G. Shanley, the attorney at Kenyon who first learned of the abandoned status of '641.
6. Ingrid Hodge, the Kenyon employee who first learned of the abandoned status of '641.

C. Enumerated Facts Related to the Delay

1. The USPTO mailed an Advisory Action regarding '641 to Kenyon on February 29, 2000. The address on the cover page of the Advisory Action listed Kenyon's address as "1025 CONNECTICUT AVENUE NW." (O'Dowd Decl. ¶ 18.)

2. On February 29, 2000, the offices of Kenyon were no longer located at "1025 CONNECTICUT AVENUE NW" in Washington, DC. Less than one year prior to February 29, 2000, in March of 1999, Kenyon had moved its offices to 1500 K Street, NW, also in Washington DC. (O'Dowd Decl. ¶ 19.)

3. As evidenced by an entry into Kenyon's computerized docketing system, the Advisory Action of February 29, 2000 was received by Kenyon. (O'Dowd Decl. ¶ 20.)

4. In response to the Advisory Action, Applicants filed a Continued Prosecution Application (CPA) with the USPTO on March 15, 2000, along with a fee of \$800. The mailing of the CPA was entered into Kenyon's computerized docketing system. (O'Dowd Decl. ¶ 21.)

5. The Transmittal Form for the CPA filed March 15, 2000 listed "1500 K Street, N.W." as the address of Kenyon. (O'Dowd Decl. ¶ 22.)

6. On March 29, 2000, Applicants filed a Preliminary Amendment with the USPTO via facsimile. The Preliminary Amendment faxed to the USPTO on March 29, 2000 listed "1500 K Street, N.W." as the address of Kenyon. (O'Dowd Decl. ¶ 23.)

7. On April 17, 2000, the USPTO mailed a Notice of Allowability to Kenyon at "1025 CONNECTICUT AVENUE NW" in Washington, DC. (O'Dowd Decl. ¶ 24.)

8. Prior to April 17, 2000, staff at Kenyon had been instructed to change the correspondence addresses of the many cases then prosecuted by Kenyon's Washington, DC office.

However, by April 17, 2000, all cases had not yet been processed, including '641. (O'Dowd Decl. ¶ 25.)

9. The computerized docketing system at Kenyon does not reflect receipt of the Notice of Allowability by Kenyon. (O'Dowd Decl. ¶ 26.)

10. A copy of the "ISSUE FEE TRANSMITTAL" form is contained within the USPTO filewrapper for '641. The copy is not signed. Furthermore, the copy is stamped "MATCH & RETURN" and "RECEIVED APR 17 2000 TC 3600 MAILROOM." (O'Dowd Decl. ¶ 27.)

11. The Notice of Allowability indicates that an issue fee of \$1210 was due on July 17, 2000. (O'Dowd Decl. ¶ 28.)

12. Docketing records at Kenyon do not reflect the payment of a \$1210 issue fee for '641. (O'Dowd Decl. ¶ 29.)

13. On September 13, 2000, according to a copy of a document retrieved from the '641 USPTO filewrapper, the USPTO mailed a Notice of Abandonment to Kenyon at "1025 CONNECTICUT AVENUE NW" in Washington, DC. The Notice of Abandonment was stamped with a message "ABANDONMENT CONTACT PERSON IS: TOM HAWKINS 305-8380." (O'Dowd Decl. ¶ 30.)

14. There is no evidence in Kenyon's files, nor in the '641 USPTO filewrapper that Tom Hawkins, or anyone else at the USPTO, attempted to contact Kenyon via telephone prior to mailing the Notice of Abandonment. (O'Dowd Decl. ¶ 31.)

15. Docketing records at Kenyon do not reflect the receipt of the Notice of Abandonment. (O'Dowd Decl. ¶ 32.)

16. On October 2, 2000, John C. Altmiller (Reg. No. 25,951) of Kenyon signed a Change of Correspondence Address changing the correspondence address of '641 to that of customer number 23838. (O'Dowd Decl. ¶ 33.)

17. According to a paper retrieved from the '641 USPTO filewrapper, the Change of Correspondence Address was stamped as received by OIPE on October 3, 2000, as received by Technology Center 2800 on October 4, 2000, and as received by Technology Center 2700 on October 6, 2000. There is no other evidence in the '641 USPTO filewrapper that the Change of Correspondence Address signed October 2, 2000 was considered by the USPTO. (O'Dowd Decl. ¶ 34.)

18. On October 30, 2000, Robert Hails (Reg. No. 39,702) of Kenyon transmitted by facsimile a second Change of Correspondence Address to Examiner Olga Hernandez. The second Change of Correspondence Address form indicated that future communications should be sent to John C. Altmiller of Kenyon at 1500 K Street, N.W. in Washington, DC. (O'Dowd Decl. ¶ 35.)

19. According to a paper retrieved from the '641 USPTO filewrapper, the second Change of Correspondence Address was stamped as received by Group 3600 on October 30, 2000. This paper is marked as paper #19, initialed by DRS, and dated June 12 of an unknown year (the retrieved copy reads "6-12-0" — the final number appears to have been cut-off upon copying). (O'Dowd Decl. ¶ 36.)

20. According to a paper retrieved from Kenyon's files, an Associate Power of Attorney appointing "John C. Altmiller (Reg. No. 25,951) and other registered practitioners of Kenyon included in [Customer Number 23858]" was stamped as received by the USPTO on December 11, 2000. The paper, which had Kenyon's New York office address at the bottom of

the page, is dated November 6, 2000, and is signed by Edward W. Greason (Reg. No. 18,918).
(Altmiller Decl. ¶ 16.)

21. On January 12, 2001, Kathy Ryan at Kenyon learned from a “[c]onversation w/ group receptionist” that the USPTO file for ‘641 was reported lost on November 27, 2000, the last known destination for the file being “the file repository.” Kathy Ryan also left a message with Examiner O. Hernandez at 10:45 AM. The Examiner called back at 2:45 “to verify that file is in Depository.” A note written next to the record of the 10:45 message indicates “Power to Inspect.” (O’Dowd Decl. ¶ 39.)

22. According to a paper retrieved from Kenyon’s paper files, a “POWER TO INSPECT AND MAKE COPIES” was signed by John C. Altmiller on February 7, 2001. A handwritten note on the top of the document indicates “LOST 1/16/01.” A sticky note signed by “Cathy” attached to the document indicates “Denise/Jay to go over 2/8/01.” (O’Dowd Decl. ¶ 40.)

26. According to a paper and postcard retrieved from Kenyon’s files, a File Reconstruction request was stamped as received by “Licensing & Review” on March 23, 2001. The paper indicates:

We have been informed by the Office that the U.S. Patent and Trademark Office’s file for [08/750,641] has been lost. Please find attached a copy of the relevant documents forming the file history for this application from the applicant’s files for use in reconstructing the Office’s file.

Please reconstruct the file. Thank you for your attention to this matter. Please contact [Mark H. Neblett (Reg. No. 42,028)], for any questions.

The paper was signed by Mark H. Neblett. The postcard is dated March 22, 2001. (Neblett Decl. ¶¶ 5-7.)

27. There is no evidence in the ‘641 USPTO filewrapper that the File Reconstruction request was considered by the USPTO. (O’Dowd Decl. ¶ 42.)

28. On July 15, 2002, an entry was made into the electronic docketing system at Kenyon indicating "PTO lost file-awaiting OA." (O'Dowd Decl. ¶ 43.)

29. On July 31, 2003, Mark H. Neblett resigned from employment at Kenyon. (O'Dowd Decl. ¶ 44.)

30. On September 8, 2003, a postcard for a Status Inquiry for '641 was stamped as received by the USPTO. (O'Dowd Decl. ¶ 46.)

31. A paper entitled "STATUS INQUIRY" signed by John C. Altmiller is present in Kenyon's paper files. The paper, which is dated September 8, 2003, "respectfully request[s] that the Examiner inform Applicants of the status of the application." The paper further indicates that "The U.S. Patent and Trademark Office notified Applicants that the subject file had been lost and, accordingly, Applicants filed a copy of the relevant documents forming the file history in a File Reconstruction on March 23, 2001." The paper also authorized the Commissioner to "charge any fee relevant to this filing to Kenyon & Kenyon Deposit Account No. 11-0600." The paper has Kenyon's 1500 K Street, N.W. address at the bottom of the page. (O'Dowd Decl. ¶ 45.)

32. There is no evidence in the '641 USPTO filewrapper that the Status Inquiry of September 8, 2003 was considered by the USPTO. (O'Dowd Decl. ¶ 47.)

33. According to a postcard retrieved from Kenyon's files, an Information Disclosure Statement and accompanying papers was stamped as received by the USPTO (OIPE) on November 18, 2003. (O'Dowd Decl. ¶ 50.)

34. An Information Disclosure Statement (IDS) signed by William E. Curry (Reg. No. 43,572) and dated November 18, 2003 is present in the '641 USPTO filewrapper. The IDS lists Kenyon's 1500 K Street, N.W. address. The IDS is stamped as being received by Group 3600 on November 24, 2003. According to the IDS, as well as the cover of the '641 USPTO filewrapper,

the IDS was designated as Paper #20. The IDS indicates that the designation of “#20” was given on February 13, 2004 (“2/13/4”). (O’Dowd Decl. ¶ 49.)

35. A paper entitled “REQUEST FOR STATUS” signed by William E. Curry (Reg. No. 43,572) is present in Kenyon’s paper files. The paper, which is dated September 15, 2004, indicated:

A request for continued prosecution with an Information Disclosure Statement was filed in this case on 15 March 2000. A preliminary amendment was faxed to the Examiner on 29 March 2000. A change of correspondence address was filed on 30 October 2000. Thereafter, a copy of the entire file was submitted for re-construction of the lost file on 23 March 2001. A status inquiry was filed on 8 September 2003. Information Disclosure Statements were filed on 18 November 2003 and 9 September 2004, respectively.

It is respectfully requested that the undersigned [William E. Curry] be informed when an Office Action or other communication from the Patent Office may be expected in this case.

The paper has Kenyon’s 1500 K Street, N.W. address at the bottom of the page. A stamped postcard confirms that the USPTO received the paper on September 15, 2004. (O’Dowd Decl. ¶ 52.)

36. There is no evidence in the ‘641 USPTO filewrapper that the Request for Status of September 15, 2004 was considered by the USPTO. (O’Dowd Decl. ¶ 53.)

37. In January 2007, William E. Curry’s employment ended at Kenyon. (O’Dowd Decl. ¶ 54.)

38. On July 31, 2007, John C. Altmiller resigned from employment at Kenyon. (O’Dowd Decl. ¶ 55.)

39. Contemporaneous with John C. Altmiller’s resignation, Shawn W. O’Dowd (Reg. No. 34,687) was docketed as the attorney responsible for ‘641. (O’Dowd Decl. ¶ 56.)

40. On June 27, 2008, Japanese patent counsel for Applicants' faxed a letter to Kenyon inquiring as to the status of '641. The communication was addressed to William E. Curry.

(O'Dowd Decl. ¶ 57.)

41. On July 10, 2008, Japanese patent counsel for Applicants' faxed a reminder communication to Kenyon. (O'Dowd Decl. ¶ 58.)

42. After receipt of the July 10, 2008 communication, the file wrapper for '641 was forwarded to Daniel Shanley, a Kenyon associate who assists Shawn W. O'Dowd with numerous Toyota prosecution matters. (Shanley Decl. ¶ 5.)

43. Daniel Shanley, after reviewing the file wrapper, asked Ingrid Hodge to contact the USPTO regarding the status of '641. (Shanley Decl. ¶ 6; Hodge Decl. ¶ 4.)

44. Ingrid Hodge's July 10, 2008 telephonic inquiry to the USPTO was eventually directed to Ms. Barr of the Office of Petitions. Ms. Barr alerted Ingrid Hodge as to the abandoned status of '641, and suggested that a "Petition to withdrawing of the Holding of Abandonment" be filed along with "docket records, etc." (Hodge Decl. ¶ 5.)

45. Applicants filed the Original Petition on August 6, 2008. (O'Dowd Decl. ¶ 5.)

46. The USPTO mailed the Dismissal September 10, 2008. (O'Dowd Decl. ¶ 6.)

47. Applicants' attorneys had several questions regarding the Dismissal, and attempted to contact Examiner Walsh regarding the same; however, Examiner Walsh was away from her usual examining functions for much of September and October (e.g., for extended training). On October 24, 2008, Applicants' attorneys were able to discuss the petition with Examiner Walsh. (O'Dowd Decl. ¶ 7.)

48. The primary concern of Applicants' was the Examiner's many requirements relating to "all persons . . . having firsthand knowledge of the circumstances surrounding the

protracted delay,” such as the requirement for statements and “[c]opies of any correspondence relating to the filing, or to not filing a further reply to the outstanding Office action.” (*See* Dismissal at 2-3.) After the discussion with Examiner Walsh on October 24, 2008 involving the facts and witnesses available to us at this time, Examiner Walsh indicated that especially in light of the fact that only the payment of an issue fee was at issue in this case, it would not be necessary at this time to go to extraordinary measures to get statements from all persons having firsthand knowledge of the circumstances surrounding the delay. (O’Dowd Decl. ¶ 8.)

D. Discussion

It is respectfully submitted that the above facts clearly establish that “the delay in reply that originally resulted in the abandonment” represented unintentional delay on the part of Applicants. Applicants did not pay the issue fee of \$1210 by the due date of July 17, 2000, because they did not know that an issue fee was due by that date. (*See* Enumerated Facts ¶¶ 7-12.) As evidenced by the filing of a CPA, a \$800 fee, and a preliminary amendment within several months of the date of abandonment, it is clear that Applicants did not intentionally allow ‘641 to go abandoned. (*See* Enumerated Facts ¶¶ 4-6.) Furthermore, it is submitted that ‘641 went abandoned on July 17, 2000, despite the exercise of due care and diligence on the part of Applicants. Kenyon utilized a computerized docketing system, employed staff for docketing purposes, and had engaged in efforts to change correspondence addresses for their many pending patent applications. (*See, e.g.,* Enumerated Facts ¶¶ 8, 28; *see also* Russo Decl. ¶¶ 2, 4-5.) It was unfortunate, but unintentional, that Kenyon’s systems and internal processes failed to avoid the abandonment of ‘641.

It is also respectfully submitted that the above facts clearly establish that “the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application” represented

unintentional delay on the part of Applicants. Applicants did not file the Original Petition until August 6, 2008 because they did not know that '641 was abandoned until on or about July 10, 2008. (See Enumerated Fact ¶ 44.) Furthermore, it is submitted that Applicants were unable to discover the abandoned status of '641 at an earlier time, despite the exercise of due care and diligence on the part of Applicants. Kenyon utilized a computerized docketing system, employed staff for docketing purposes, and had engaged in extensive efforts to determine the status of '641. (See, e.g., Enumerated Facts ¶¶ 8, 28; see also Russo Decl. ¶¶ 2, 4-5.) Despite Applicants' efforts, the USPTO's sole response to Applicants was that the file for '641 had been lost, and that efforts were being made to find it. (See Enumerated Facts ¶¶ 16-25.) Concerned with the results and speed of the USPTO search, Applicants' undertook the effort and cost of providing the USPTO with a copy of Applicants' file history for '641. (See Enumerated Facts ¶ 26.) After that step, Applicants' reasonably believed that they had taken every step possible to move forward the prosecution of '641, and that the next step for moving forward the prosecution of '641 was in the USPTO's hands. Accordingly, it was unfortunate, but unintentional, that Applicants' were unable to file an initial petition under 37 CFR 1.137(b) at an earlier date.

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CONCLUSION

1. Petition fee

The Large entity fee of \$1,540.00 (37 CFR 1.17(m)) was paid in the Original Petition.

According to the Dismissal, no further petition fee is required for this renewed petition.

(Dismissal at 1.)

2. Proper Reply

The proper reply is enclosed herewith, i.e., an Issue Fee Transmittal Form authorizing payment of a Utility Issue Fee of \$1510, i.e., the fee required as of FY2009. It is also noted that the Notice of Allowance required Formal Drawings to be filed including changes required by the PTO-948 attached to Paper #9. The PTO-948 required: 1) adjusting the top margin of Sheet 11; and 2) correcting the placement of figure legends on Figures 1 and 13. Replacement pages correcting these issues are enclosed.

3. Terminal Disclaimer with Disclaimer Fee

Since this international application has an international filing date on or after June 8, 1995, no terminal disclaimer is required.

4. Statement

The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

5. Petition for One Month Extension of Time

A petition for a one month extension of time under 37 CFR 1.316(a) is enclosed, thus extending the due date of this Renewed Petition to December 10, 2008.

In view of the above, favorable consideration of this Renewed Petition is respectfully requested. The Examiner is invited to call the undersigned at (202) 220-4200 to discuss any information concerning this Petition. The Office is hereby authorized to charge any additional fees under 37 C.F.R. § 1.16 or § 1.17 or credit any overpayment to Deposit Account No. 11-0600.

Date: 10 December 2008

Telephone
Number: (202) 220-4200

Sh 0.21
Signature

Shawn W. O'Dowd
(Reg. No. 34,687)

KENYON & KENYON LLP
1500 K Street, N.W., Suite 700
Washington, DC 20005

Enclosures:

- 1) Petition for One Month Extension of Time Under 37 CFR 1.316(a)
- 2) Issue Fee Transmittal Form
- 3) Formal Drawing Replacement Sheets
- 4) Six Declarations (Altmiller, Neblett, Russo, O'Dowd, Shanley, Hodge), Incl. Exhibits.

MAR 10 2009

PTO/SB/22 (11-08)

Approved for use through 12/31/2008. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a) FY 2009 (Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).)		Docket Number (Optional) 77792/23	
Application Number 08/750,641		Filed 16 December 1996	
For SCHEDULE SETTING AND PROCESSING SYSTEM			
Art Unit 3661		Examiner HERNANDEZ, OLGA	
This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.			
The requested extension and fee are as follows (check time period desired and enter the appropriate fee below):			
	<u>Fee</u>	<u>Small Entity Fee</u>	
<input checked="" type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$130	\$65	\$ 130
<input type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$490	\$245	\$
<input type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$1110	\$555	\$
<input type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$1730	\$865	\$
<input type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$2350	\$1175	\$
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27.			
<input type="checkbox"/> A check in the amount of the fee is enclosed.			
<input type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.			
<input type="checkbox"/> The Director has already been authorized to charge fees in this application to a Deposit Account.			
<input checked="" type="checkbox"/> The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number <u>11-0600</u> .			
WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.			
I am the <input type="checkbox"/> applicant/inventor.			
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed (Form PTO/SB/96).			
<input checked="" type="checkbox"/> attorney or agent of record. Registration Number <u>34,687</u>			
<input type="checkbox"/> attorney or agent under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u></u>			
<u>Shawn W. O'Dowd</u> Signature		<u>10 December 2008</u> Date	
<u>Shawn. W. O'Dowd</u> Typed or printed name		<u>202-220-4200</u> Telephone Number	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
<input checked="" type="checkbox"/> Total of <u>1 (One)</u> forms are submitted.			

This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: **Mail** Mail Stop ISSUE FEE
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 or **Fax** (571) 273-2885

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INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

<i>Richard D. Ward</i>	(Depositor's name)
<i>R.D. Ward</i>	(Signature)
12/10/2008	(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/750,641	12/16/96	Koji SATO	77792/23	4304

TITLE OF INVENTION:

SCHEDULE SETTING AND PROCESSING SYSTEM

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
UTILITY	NO	\$1510		\$1510	

EXAMINER	ART UNIT	CLASS-SUBCLASS
HERNANDEZ, OLGA	3661	701/202

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively,
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

KENYON & KENYON LLP

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

TOYOTA JIDOSHA KABUSHIKI KAISHA

Toyota-shi, JAPAN

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☒ Corporation or other private group entity ☐ Government

4a. The following fee(s) are enclosed:

- ☒ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☒ Advance Order - # of Copies **5 (Five)**

4b. Payment of Fee(s):

- ☐ A check in the amount of the fee(s) is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☒ The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number **11-0600**

5. Change in Entity Status (from status indicated above)

- ☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

The Director of the USPTO is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above. NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature

Shawn W. O'Dowd

Date **10 December 2008**

Typed or printed name

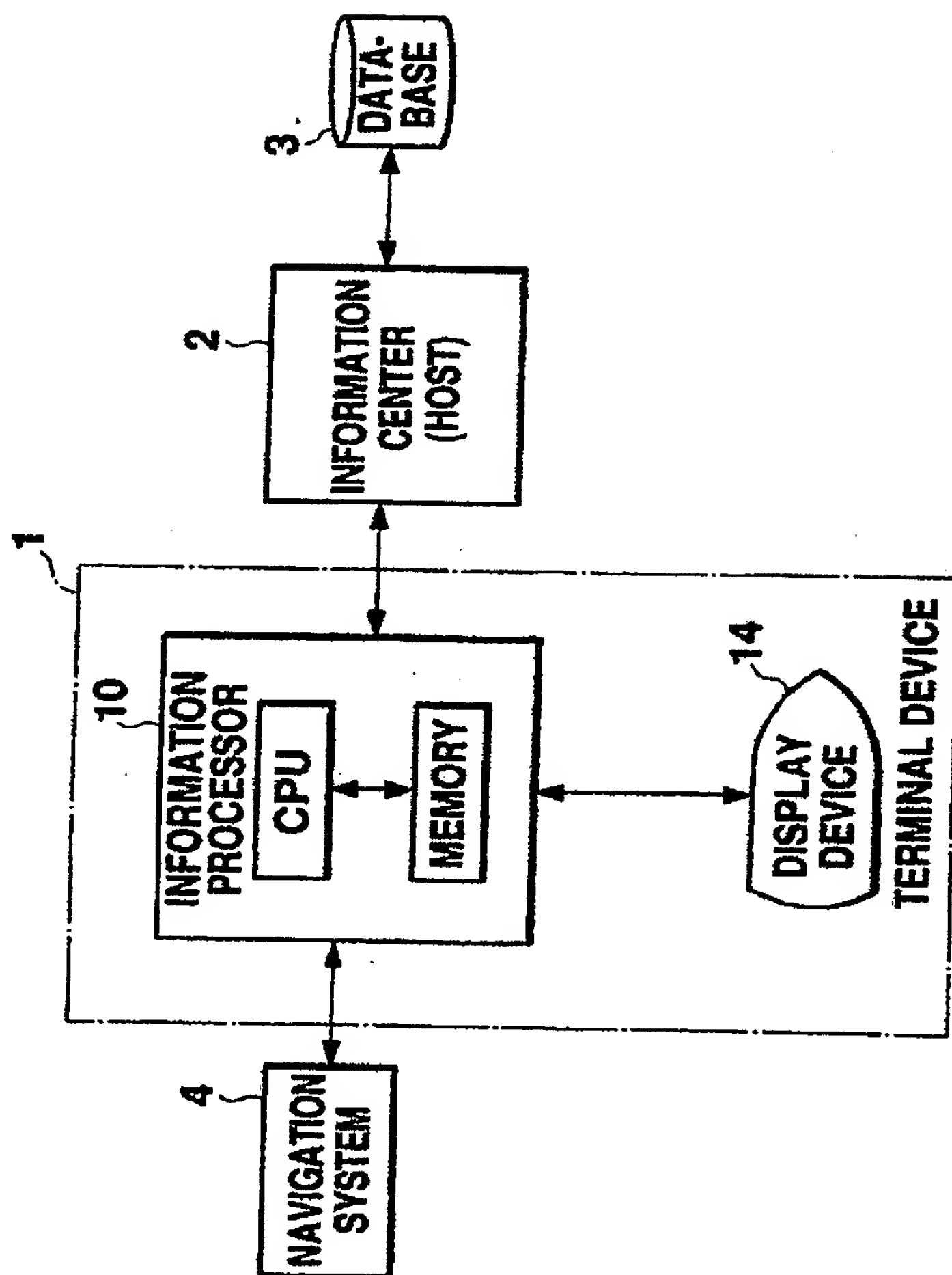
Shawn W. O'Dowd

Registration No. **34,687**

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REPLACEMENT SHEET

**Fig. 1**

REPLACEMENT SHEET

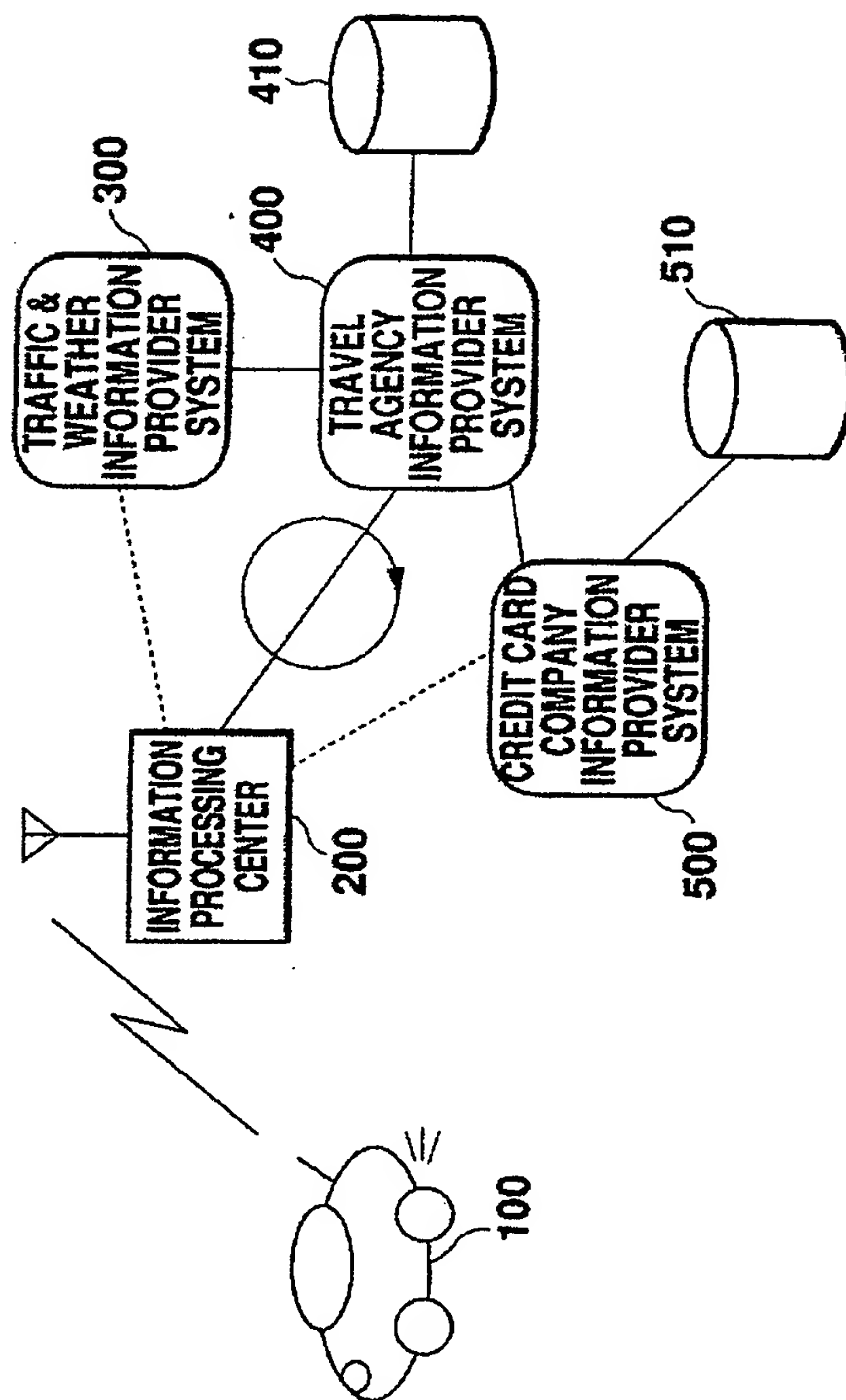


Fig. 13

REPLACEMENT SHEET

Fig. 15(A)

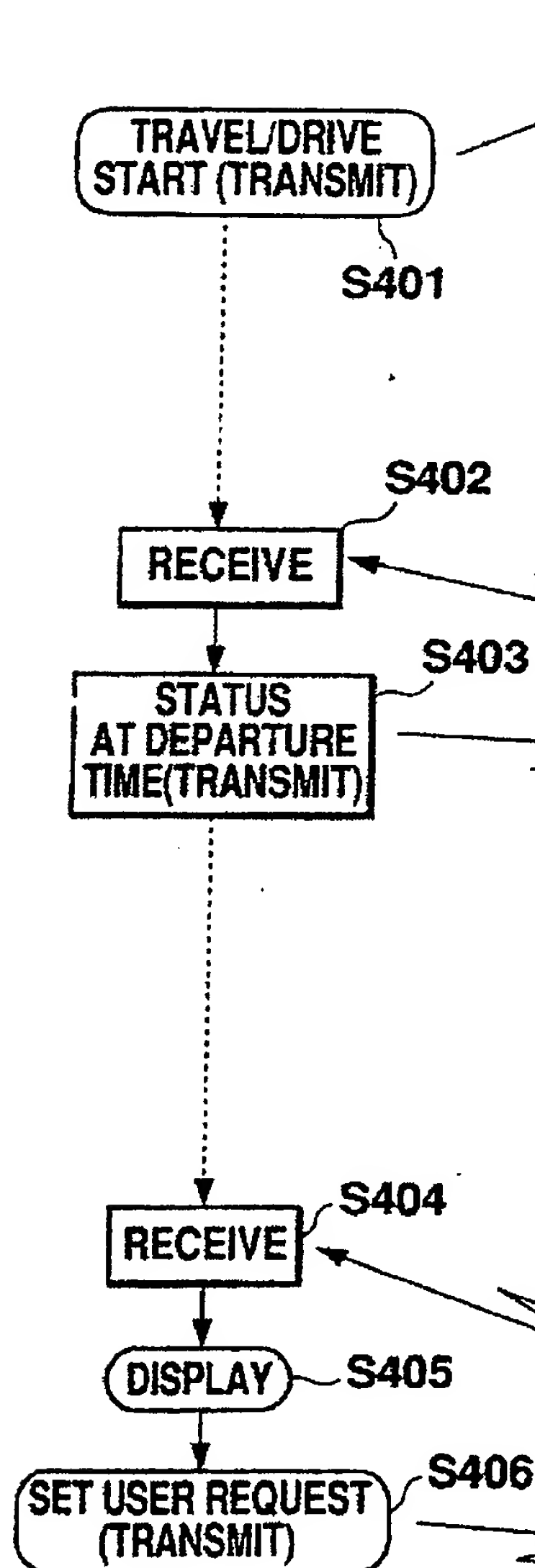
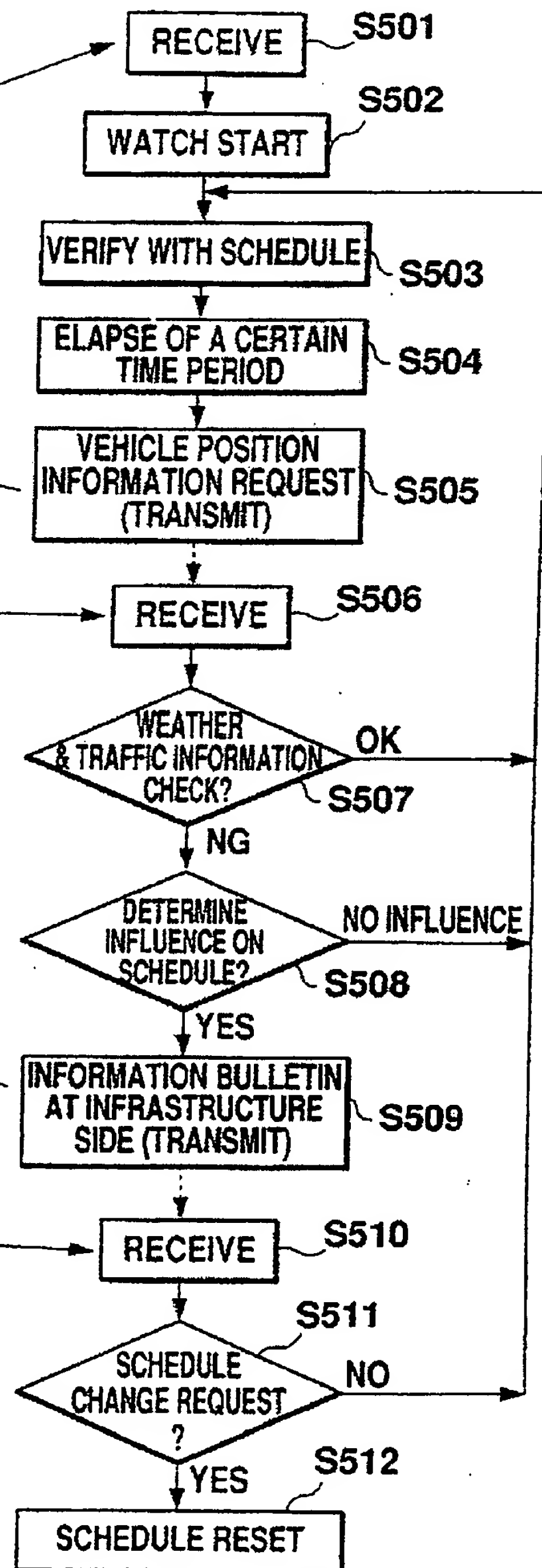


Fig. 15(B)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Koji SATO, et al.
Application No. 08/750,641
Filing Date : 16 December 1996
Title : SCHEDULE SETTING AND PROCESSING SYSTEM
Art Unit : Office of Petitions
Examiner : L. Walsh

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**DECLARATION OF
JOHN C. ALTMILLER**

I, the undersigned, John C. Altmiller, make this declaration in support of the Renewed Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR § 1.137(b) for the above identified application.

1. Since about August 2007, I have been retired from the active practice of patent law. My current home address is 1908 Ballycor Drive, Vienna, VA 22182.
2. From about 1986 to July 31, 2007, I served as a partner of Kenyon & Kenyon LLC ("Kenyon") in Kenyon's Washington, DC offices. Prior to that time, I worked in Kenyon's New York office.
3. During my employment and tenure as a partner at Kenyon, I had numerous responsibilities, including prosecuting patent applications for Toyota Jidosha Kabushiki Kaisha ("Toyota"), the assignee of U.S. Patent Application Serial No. 08/750,641 ("641").
4. To my recollection, from at least 1995 to about July 2007, I was docketed as a supervising attorney/partner for many patent applications for Toyota. During this time I supervised several associates who assisted me with Toyota prosecution matters, including, Sterlon Mason, Mark H. Neblett, and William E. Curry.

5. It is my understanding that a Continuing Prosecution Application ("CPA") for '641 was filed with the USPTO on March 15, 2000.

6. It is my understanding that a Preliminary Amendment for '641 was filed with the USPTO on March 29, 2000.

7. It is my understanding that a Notice of Allowance and an Issue Fee Transmittal form for '641 was mailed to a prior address of Kenyon's Washington, DC office on April 17, 2000.

8. It is my understanding that an "Issue Fee Transmittal" form is present in the USPTO's file wrapper for '641 and that this form remains blank (uncompleted). The form is stamped "MATCH & RETURN" and further stamped "RECEIVED APR 27 2000 TC 3600 MAIL ROOM."

9. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the Notice of Allowance for '641 was not received by Kenyon & Kenyon, but rather, was returned to the USPTO as undeliverable.

10. I did not know of the Notice of Allowance for '641 until contacted in 2008 by Shawn O'Dowd, who is currently a partner at Kenyon.

11. It is my understanding that a Notice of Abandonment was mailed to a prior address of Kenyon's Washington, DC office on September 13, 2000.

12. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the Notice of Abandonment for '641 was not received by Kenyon & Kenyon.

13. I did not know of the Notice of Abandonment for '641 until contacted in 2008 by Shawn W. O'Dowd.

14. According to a document in Kenyon's paper files, I signed a change of correspondence address form for '641 on October 2, 2000, and that this form was stamped as received by the USPTO on October 3, 2000. I have no specific recollection relating to the signing or filing of this document. This document is attached as Exhibit 1 to this declaration.

15. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the form was prepared for my signature by Cathy Ryan, a patent secretary at Kenyon who was then tasked with the responsibility of changing addresses for many of the cases then prosecuted by Kenyon. I have no specific recollection relating to this form.

16. According to documents in Kenyon's paper files, two other Kenyon attorneys filed documents with the USPTO relating to the correspondence address and power of attorney for the '641 application. These documents, as well as a communication relating to the filing of the documents, are attached as Exhibit 2 to this declaration. I have no specific recollection relating to these documents or the communication.

17. It is my understanding that the USPTO's paper file for '641 was officially "reported lost in USPTO" on November 27, 2000 ("11/27th [sic]"). Memoranda from Cathy Ryan, dated "1/12/00 [sic]" documenting this November 27th date is attached as Exhibit 3 to this declaration.

18. It is my understanding that I signed a "POWER TO INSPECT AND MAKE COPIES" of the '641 file on February 7, 2001. I have no specific recollection relating to the signing or filing of this document. This document is attached as Exhibit 4 to this declaration.

19. It is my understanding that Mark H. Neblett filed a File Reconstruction request which was stamped as received by "Licensing & Review" on March 23, 2001. This document is attached as Exhibit 5 to this declaration.

20. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the USPTO informed us that the file for '641 had been lost, that we filed a request for reconstruction of the '641 file, and then awaited a USPTO response.

21. It is my understanding that an electronic docket entry entitled "PTO lost file-awaiting OA" was entered into Kenyon's electronic docketing system on July 15, 2002." Evidence of the docket entry is attached as Exhibit 6 to this declaration.

22. It is my understanding that I signed a document entitled "STATUS INQUIRY" on September 8, 2003. I have no specific recollection relating to the signing or filing of this document. The document "respectfully request[s] that the Examiner inform Applicants of the status of ['641]." The paper further indicates that "The U.S. Patent and Trademark Office notified Applicants that the subject file had been lost and, accordingly, Applicants filed a copy of the relevant documents forming the file history in a File Reconstruction on March 23, 2001." The paper also authorized the Commissioner to "charge any fee relevant to this filing to Kenyon & Kenyon Deposit Account No. 11-0600." The paper has Kenyon & Kenyon's 1500 K Street, N.W. address at the bottom of the page. This document is attached as Exhibit 7 to this declaration.

23. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that a review of my pending cases, which revealed the "PTO lost file" entry, prompted the filing of the Status Inquiry of September 8, 2003.

24. During my employment at Kenyon, neither the USPTO nor anyone at Kenyon advised me that '641 had been abandoned.

25. During my employment at Kenyon, neither the client nor anyone at Kenyon requested me to allow '641 to become abandoned.

26. After leaving my employment at Kenyon, I have not been involved in prosecution of, or been provided information regarding '641, until being recently advised of the present Petition.

I declare that all of the above statements made based on my own knowledge are true and that all of the above statements that were made on information and belief are believed to be true, and further declare that these statements are made with the knowledge that knowing, willful and materially false statements, as are defined under Section 1001 of Title 18 of the United States Code, are punishable by fine, imprisonment, or both under Section 1001, and that such statements may affect the validity of the any patent issuing from '641 if the application is revived.

Dated: 9 December 2008


John C. Altmiller

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EXHIBIT 1 TO ALTMILLER DECLARATION

MAR 10 2009

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Please type a plus sign (+) inside this box → ☐

PTO/SB/122 (11-86)
Approved for use through 6/30/93. OMB 0651-0035
Patent and Trademark Office U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

CHANGE OF CORRESPONDENCE ADDRESS <i>Application</i> Address to: Assistant Commissioner for Patents Washington, D.C. 20231	Application Number	08/750,641
	Filing Date	12/16/96
	First Named Inventor	Sato
	Group Art Unit	2316
	Examiner Name	
	Attorney Docket Number	77792/23

Toyoke / Yoshida

Please change the Correspondence Address for the above-identified application to:



Customer Number

23838

Type Customer Number here



OR

Firm or
Individual Name

Address

Address

City

Country

Telephone

Fax

This form cannot be used to change the data associated with a Customer Number. To change the data associated with an existing Customer Number use "Request for Customer Number Data Change" (PTO/SB/124).

I am the:



Applicant.



Assignee of record of the entire interest.
Certificate under 37 CFR 3.73(b) is enclosed.



Attorney or agent of record.

Typed or
Printed Name

John C. Alt Miller

Signature

John C. Alt Miller

Date

10/2/00

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

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EXHIBIT 2 TO ALTMILLER DECLARATION

PATENT
Docket No. 77792/23IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : Koji SATO, et al
SERIAL NO. : 08/750,641
FILED : December 16, 1996
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM
GROUP ART UNIT : 2316
EXAMINER : O. Hernandez

Assistant Commissioner for Patents
Washington D.C. 20231

CHANGE OF CORRESPONDENCE ADDRESS

S I R:

Notice is hereby given that the correspondence address in the above-identified application has changed. Please address all future communications regarding this application to:

John C. Altmiller
KENYON & KENYON
1500 K Street, N.W.
Washington, D.C. 20006

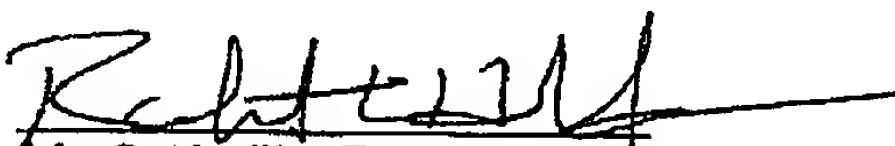
This address change is effective immediately. Thank you.

Respectfully submitted,

KENYON & KENYON

Dated: October 30, 2000

KENYON & KENYON
1500 K Street, N.W., Suite 700
Washington, DC 20005
(202) 220-4200
(202) 220-4201 (fax)


John C. Altmiller (Reg. No. 25,951)
Robert L. Hails, Jr. (Reg. No. 39,702)

DC01 322791 v 1

DC01 748944 v1

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(7)

PATENT
Docket No.: 77792/23IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT :
SERIAL NO. : 08/750641
FILING DATE : December 16, 1996
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM

Commissioner of Patents and Trademarks
Washington D.C. 20231

ASSOCIATE POWER OF ATTORNEY

Sir:

Please recognize John C. Altmiller, (Reg. No. 25,951) and other registered practitioners of Kenyon & Kenyon included in the Customer Number provided below, with full power to prosecute said application, to make alterations and amendments therein, and to transact all business in the Patent and Trademark Office connected therewith.

CUSTOMER NUMBER: 23838

Respectfully submitted,

Date November 6, 2000
Edward W. Greason
Reg. No. 18,918

KENYON & KENYON
One Broadway
New York, NY 10004
(212) 425-7200 (telephone)

DC01 333824 v 1

DC01 748944 v1

Inserra, Barbara

From: Neblett, Mark
 Sent: Wednesday, November 01, 2000 10:14 AM
 To: JCAKK@cs.com; Gresson, Edward
 Cc: Hails, Robert
 Subject: FW: Toyota 77792/23

Toyota/Yashida
 (app)

In response to John Altwerler's questions, below:

The 1025 Conn. address was the only one in the file (although 1500 K was on correspondence Sterlon Mason sent to the PTO in March 2000). Bob Hails filed the formal address change to 1500 K on Monday.

Mark H. Neblett
 KENYON & KENYON
 1500 K Street, N.W.
 Washington, DC 20006
 (202) 220-4200
 (202) 220-4201 (facsimile)
 (202) 220-4232 (direct)
 mneblett@kenyon.com

NOTE: The information in this e-mail message is confidential and intended only for the use of the intended recipient. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by e-mail, and destroy the original message. Thank you.

-----Original Message-----

From: Hails, Robert
 Sent: Wednesday, November 01, 2000 8:20 AM
 To: Neblett, Mark
 Subject: FW: Toyota 77792/23

Mark,

I got the following from JCA.

Bob

-----Original Message-----

From: JCAKK@cs.com [mailto:JCAKK@cs.com]
 Sent: Tuesday, October 31, 2000 12:23 PM
 To: RHails@kenyon.com
 Subject: Re: Toyota 77792/23

Let Mark Neblett know. Was there a DC correspondence address for sure? Also let EWG know.

DC01 748944 v1

EXHIBIT 3 TO ALTMILLER DECLARATION**CATHY RYAN****KENYON & KENYON**1300 K STREET, N.W., SUITE 200
WASHINGTON, D.C. 20005-1007
PHONE (202) 462-4200DIRECT DIAL: (202) 462-4200
FAX: (202) 462-4201
E-MAIL: c.ryan@kenyon.com

11/12/00

Conversation w/ Group receptionist
File has been reported lost
in USPTO (11/27th) The
last known destination
for this file was the
file repository. There
is no record of
anyone ordering this
file. I recommend contacting
the Examiner to see if
they need our file to
rebuild the lost one.

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MAR 10 2009

EXHIBIT 4 TO ALTMILLER DECLARATION

LAST 1/16/01

PATENT
Docket No. 77792/23IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors : Koji SATO et al.
Serial No. : 08/750,641
Filed : December 16, 1996
For : SCHEDULE SETTING AND PROCESSING SYSTEM
Examiner : O. Hernandez

Assistant Commissioner of Patents
Washington D.C. 20231

POWER TO INSPECT AND MAKE COPIES

SIR:

Denise English and Jay Johnson are hereby authorized to inspect and copy the file for the
above-captioned matter.

Respectfully submitted,

KENYON & KENYON

Date: 2/7/01 2001



John C. Altmiller, Registration No. 25,951
KENYON & KENYON
1500 K Street, N.W. Suite 700
Washington, D.C. 20005
Telephone: (202) 220-4200
Facsimile: (202) 220-4201

EXHIBIT 5 TO ALTMILLER DECLARATION**RECEIVED
CENTRAL FAX CENTER****MAR 10 2009****PATENT
Docket No.: 77792/23****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT : Koji SATO, et al.
SERIAL NO. : 08/750,641
FILING DATE : December 16, 1996
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM
GROUP ART UNIT : 2316
EXAMINER : O. HERNANDEZ

Assistant Commissioner for Patents
Washington, D.C. 20231

FILE RECONSTRUCTION

SIR:

We have been informed by the Office that the U.S. Patent and Trademark Office's file for the above-referenced case has been lost. Please find attached a copy of the relevant documents forming the file history for this application from the applicant's files for use in reconstructing the Office's file.

Please reconstruct the file. Thank you for your attention to this matter. Please contact the undersigned at 202-220-4232, for any questions.

Respectfully submitted,



Mark H. Neblett
Reg. No. 42,028

DC01 381128 v1

DC01 748944 v1

EXHIBIT 6 TO ALTMILLER DECLARATION

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MAR 10 2009

IPSScholar
Kenyon & Kenyon

Patent Jacket Data Sheet

S. O'DOWD
DANIEL G. SHANLEYP25830 USW
Client Ref
Office DC

I. SCHEUGENPFLUG

Title SCHEDULE SETTING AND PROCESSING SYSTEM

Prosecution Particulars				Parties	
Prosecution Status	Live - Pending			Applicant/Regd.	TOYOTA JIDOSHA KABUS
Priority Claimed	6-298290	01-Dec-1994	Japan	Inventor	KIZU, Masafumi
Parent	PCT/JP95/02459	01-Dec-1995	WO	Inventor	MORIYA, Makoto
Application	08/750641	01-Dec-1995	US (PCT)	Inventor	SATO, Koji
Filed on		16-Dec-1998		Inventor	YAMASHITA, Masanobu
Publication				Recl/Frame	8387 / 229
Allowed					
Grant Fees Paid					
Grant					
Expiry					
Agent	KENYON N.Y.				
Renewal Particulars					
Renewal Status	Pre-Grant				
Annuitly					
Next Due					
Next Cost					
Cost Remain Life					
Comm Date	Communication / Action		Due Date	Last Date	Response Filed
16-Dec-1998	30 MONTH NATIONAL PHASE APPLIC		16-Dec-1998	16-Dec-1998	16-Dec-1998
16-Dec-1998	IDS Due		16-Dec-1998	16-Dec-1998	16-Dec-1998
16-Dec-1998	Preliminary Amendment		16-Dec-1998	16-Dec-1998	16-Dec-1998
16-Dec-1998	Recordal		16-Dec-1998	16-Dec-1998	16-Dec-1998
14-Feb-1997	NOTICE OF ACCEPTANCE OF APPLIC				
14-Mar-1997	Filing Receipt				
18-Mar-1997	IDS - suppl IDS		18-Mar-1997	18-Mar-1997	18-Mar-1997
07-May-1997	Recordal		07-May-1997	07-May-1997	07-May-1997
02-Jun-1997	IDS - suppl IDS		02-Jun-1997	02-Jun-1997	02-Jun-1997
27-Jun-1997	IDS - suppl IDS		27-Jun-1997	27-Jun-1997	27-Jun-1997
04-Sep-1998	IDS - suppl IDS		04-Sep-1998	04-Sep-1998	04-Sep-1998
17-Mar-1999	IDS - suppl IDS		17-Mar-1999	17-Mar-1999	17-Mar-1999
12-Oct-1999	Ext of Time Requested		12-Oct-1999	12-Oct-1999	12-Oct-1999
09-Jun-1999	Respond to Official Action		09-Nov-1999	09-Nov-1999	12-Oct-1999
23-Nov-1999	R115 Response to Final Due		23-Jan-2000	23-Jan-2000	23-Feb-2000
23-Nov-1999	Notice of Appeal Due		23-Feb-2000	23-May-2000	15-Mar-2000
	CPA Appl'n. Filed		15-Mar-2000	15-Mar-2000	15-Mar-2000
	Suppl. Info. Offcl. State.		15-Mar-2000	15-Mar-2000	15-Mar-2000
08-Sep-2003	Status Inquiry		08-Sep-2003	08-Sep-2003	08-Sep-2003
	File IDS per 11/13/03 agent let		05-Dec-2003	05-Dec-2003	18-Nov-2003
09-Sep-2004	Supplemental IDS Filed		09-Sep-2004	09-Sep-2004	09-Sep-2004
15-Sep-2004	Letter to PTO		15-Sep-2004	15-Sep-2004	15-Sep-2004
06-Aug-2008	Petition Filed		06-Aug-2008	06-Aug-2008	06-Aug-2008
06-Aug-2008	Request Continued Examination		06-Aug-2008	06-Aug-2008	06-Aug-2008
	Advisory Action Received		29-Feb-2000	29-Feb-2000	
	PTO lost Re-examining OA		15-Jul-2002	15-Jul-2002	
12-Sep-2008	Decision on Petition - Denial			12-Sep-2008	

Updated to MM/YYYY Date: Posted: 15-Sep-2009

FILED: 15-Sep-2009

77792/25

Page 1 of 2

Updated to MMYYT Upd Printed 15 Sep 2009

FILED AT: 15 Sep 2009

77792/23

Page 1 of 2

DC01 748944 v1

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EXHIBIT 7 TO ALTMILLER DECLARATION

PATENT
DOCKET NO.: 77792/23

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S): Koji SATO et al
SERIAL NO.: 08/750,641
FILED: December 16, 1996
FOR: SCHEDULE SETTING AND PROCESSING SYSTEM
ART UNIT: 2316 EXAMINER: O. Hernandez

COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

STATUS INQUIRY

SIR:

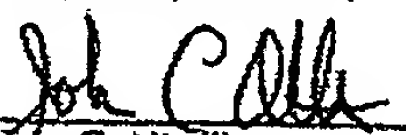
Applicants for the above-cited U.S. application respectfully request that the Examiner inform Applicants of the status of the application. Applicants filed the application on December 16, 1996 and received an official Filing Receipt on March 14, 1997.

The U.S. Patent and Trademark Office notified Applicants that the subject file had been lost and, accordingly, Applicants filed a copy of the relevant documents forming the file history in a File Reconstruction on March 23, 2001.

The Commissioner is authorized to charge any fee relevant to this filing to Kenyon & Kenyon Deposit Account No. 11-0600. A duplicate of this sheet is attached.

Respectfully submitted,

Date: September 8, 2003


John C. Altmiller
(Reg. No. 25,951)

KENYON & KENYON
1500 K Street, N.W., Suite 700
Washington, DC 20005
Tel: (202) 429-1776
Fax: (202) 429-0796

DC01 748944 v1

The stamp of the Patent Office hereon may be taken as acknowledging the receipt, on the date stamped, of:

INVENTOR(S): Keji SATO et al.
SERIAL NO.: 08750,641
FILED: December 16, 1995
TITLE: SCHEDULE SETTING AND PROCESSING SYSTEM
GROUP ART: 2316
EXAMINER: O. Hernandez

PAPERS FILED:

1. Status Inquiry

JCA/lmg

September 8, 2007



77792/23

DC01 748944 v1

**RECEIVED
CENTRAL FAX CENTER****MAR 10 2009****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Koji SATO, et al.
Application No. 08/750,641
Filing Date : 16 December 1996
Title : SCHEDULE SETTING AND PROCESSING SYSTEM
Art Unit : Office of Petitions
Examiner : L. Walsh

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**DECLARATION OF
MARK H. NEBLETT**

I, the undersigned, Mark H. Neblett (Reg. No. 42,028), make this declaration in support of the Renewed Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR § 1.137(b) for the above identified application.

1. Since about September 2003, I have been an employee of the law firm of Crowell & Moring LLP in Washington, DC. During this period, I have served as counsel, specializing in preparing and prosecuting patent applications.

2. From about March 31, 1999 to July 31, 2003, I was an employee of Kenyon & Kenyon ("Kenyon") in Washington, DC. During this period, I served as an associate.

3. During my employment at Kenyon, I was responsible for prosecuting patent applications in the mechanical and electrical arts, including prosecuting patent applications for Toyota Jidosha Kabushiki Kaisha, the assignee of U.S. Patent Application Serial No. 08/750,641 ("641").

4. Prior to March 22, 2001, to my recollection, Kenyon was contacted by the United States Patent and Trademark Office (the "Office") and informed that the Office had lost the file for U.S. Patent Application Serial No. 08/750,641. I was asked to provide a copy of the Kenyon file for this application to the USPTO, and was told that this copy would be used by the USPTO to reconstruct the official file.

5. Attached as Exhibit 1 to this Declaration is a copy of a letter I signed enclosing a copy of Kenyon's file for United States Patent Application No. 08/750,641. In that letter Kenyon asked that the file be reconstructed at the USPTO.

6. I directed my assistant to prepare Exhibit 1 and its attached application file, and directed my assistant to file Exhibit 1 with the USPTO.

7. Exhibit 2 to this declaration is a photocopy of a return date-stamped postcard received from the USPTO indicating the receipt of Exhibit 1 by the USPTO.

8. During my employment at Kenyon, I do not know of a case where I requested the USPTO to reconstruct an application file after that application was known by me to be abandoned.

9. During my employment at Kenyon, neither the USPTO nor anyone at Kenyon advised me that '641 had been abandoned.

10. During my employment at Kenyon, neither the client nor anyone at Kenyon requested me to allow '641 to become abandoned.

11. After leaving my employment at Kenyon, I have not been involved in prosecution of, or been provided information regarding, the '641 application, until being recently advised of the present Petition.

I declare that all of the above statements made based on my own knowledge are true and that all of the above statements that were made on information and belief are believed to be true, and further declare that these statements are made with the knowledge that knowing, willful and materially false statements, as are defined under Section 1001 of Title 18 of the United States Code, are punishable by fine, imprisonment, or both under Section 1001, and that such statements may affect the validity of the any patent issuing from '641 if the application is revived.

Dated: 12/4/08



Mark H. Neblett

**RECEIVED
CENTRAL FAX CENTER****MAR 10 2009****EXHIBIT 1 TO NEBLETT DECLARATION****PATENT
Docket No.: 77792/23****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT : Koji SATO, et al.
SERIAL NO. : 08/750,641
FILING DATE : December 16, 1996
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM
GROUP ART UNIT : 2316
EXAMINER : O. HERNANDEZ

Assistant Commissioner for Patents
Washington, D.C. 20231

FILE RECONSTRUCTION**SIR:**

We have been informed by the Office that the U.S. Patent and Trademark Office's file for the above-referenced case has been lost. Please find attached a copy of the relevant documents forming the file history for this application from the applicant's files for use in reconstructing the Office's file.

Please reconstruct the file. Thank you for your attention to this matter. Please contact the undersigned at 202-220-4232, for any questions.

Respectfully submitted,



Mark H. Neblett
Reg. No. 42,028

DC01 361125 v 1

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CENTRAL FAX CENTER**MAR 10 2009****EXHIBIT 2 TO NEBLETT DECLARATION**

The stamp of the Patent Office hereon, may be taken as acknowledging the receipt, on the date stamped, of

APPLICANTS: Koji SATO, et al.
SERIAL NO.: 08/750,641
FILED: December, 16, 1996
FOR: *SCHEDULE SETTING AND PROCESSING
SYSTEM*
GROUP ART UNIT: 2316

PAPERS FILED:

1. File Reconstruction

MHN/cct

77792/23

3/22/0
1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**RECEIVED
CENTRAL FAX CENTER****MAR 10 2009**

Applicant : Koji SATO, et al.
Application No. 08/750,641
Filing Date : 16 December 1996
Title : SCHEDULE SETTING AND PROCESSING SYSTEM
Art Unit : Office of Petitions
Examiner : L. Walsh

**Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

**DECLARATION OF
JUDITH M. RUSSO**

I, the undersigned, Judith M. Russo, make this declaration in support of the Renewed Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR § 1.137(b) for the above identified application.

1. From about November 6, 2002, I have been an employee of Kenyon & Kenyon LLP ("Kenyon") in Kenyon's Washington, DC office. My current title is Intellectual Property Support Coordinator.

2. I currently supervise the operation of Kenyon's computerized docketing system for Kenyon's Washington DC office. I am one of over a dozen employees in Kenyon's docketing department.

3. On July 10, 2008, to my recollection, I was consulted by Ingrid Hodge regarding the possible abandoned status of U.S. Patent Application Serial No. 08/750,641 ("641").

4. I have examined the docketing records for '641, and see no evidence that Kenyon received a paper or communication prior to July 2008 indicating that '641 was abandoned. A copy of the docketing report for '641 as of September 15, 2008 is attached as Exhibit 1 to this declaration.

5. As of July 10, 2008, Kenyon's electronic docketing system listed '641 as a pending application and as "PTO lost file-awaiting OA," where "OA" means "Office Action." Kenyon's electronic docketing system indicates that the "PTO lost file-awaiting OA" status was entered into the system on July 15, 2002.

6. A "PTO lost file-awaiting OA" status would appear on various docketing reports, but such a status would not directly prompt the need for action by a prosecuting attorney, as such status makes it clear that Kenyon is awaiting an Office Action from the USPTO.

7. Prior to July 10, 2008, neither the USPTO, nor anyone at Kenyon advised me that '641 had been abandoned.

8. To my knowledge and belief, the entire delay in filing the required reply for '641 from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

I declare that all of the above statements made based on my own knowledge are true and that all of the above statements that were made on information and belief are believed to be true, and further declare that these statements are made with the knowledge that knowing, willful and materially false statements, as are defined under Section 1001 of Title 18 of the United States Code, are punishable by fine, imprisonment, or both under Section 1001, and that such statements may affect the validity of the any patent issuing from '641 if the application is revived.

Dated: 12-10-08

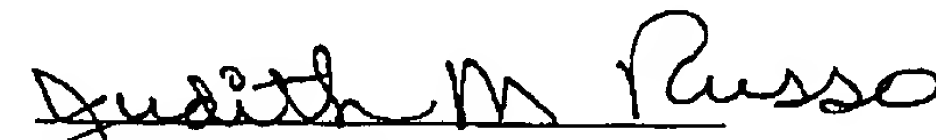

Judith M. Russo

EXHIBIT 1 TO RUSSO DECLARATION

IPSScholar
Kenyon & Kenyon

Patent Jacket Data Sheet



S. O'DOWD
DANIEL G. SHANLEY

P25830 USW

Client Ref

Office DC

I. SCHEUGENPFLUG

Title SCHEDULE SETTING AND PROCESSING SYSTEM

Prosecution Particulars			Parties	
Prosecution Status	Live - Pending		Applicant/Regd.	TOYOTA JIDOSHA KABUS
Priority Claimed	8-298290	01-Dec-1994 Japan	Inventor	KIZU, Masakuni
Parent	PCT/JP95M2459	01-Dec-1995 WO	Inventor	MORITA, Makoto
Application	08/750641	01-Dec-1996 US [PCT]	Inventor	SATO, Koji
Filed on		16-Dec-1996	Inventor	YAMASHITA, Masanobu
Publication			Reel/Frame	8387 / 229
Allowed				
Grant Fees Paid				
Grant				
Expiry				
Agent	KENYON N.Y.			
Renewal Particulars				
Renewal Status	Pre-Grant			
Annuity				
Next Due				
Next Cost				
Cost Residual				

Comm Data	Communication / Action	Due Date	Last Date	Response Filed
16-Dec-1996	30 MONTH NATIONAL PHASE APPLIC	16-Dec-1996	16-Dec-1996	16-Dec-1996
16-Dec-1996	IDS Due	16-Dec-1996	16-Dec-1996	16-Dec-1996
16-Dec-1996	Preliminary Amendment	16-Dec-1996	16-Dec-1996	16-Dec-1996
16-Dec-1996	Recordal	16-Dec-1996	16-Dec-1996	16-Dec-1996
14-Feb-1997	NOTICE OF ACCEPTANCE OF APPLIC			
14-Mar-1997	Filing Receipt			
18-Mar-1997	IDS - suppl IDS	18-Mar-1997	18-Mar-1997	18-Mar-1997
07-May-1997	Recordal	07-May-1997	07-May-1997	07-May-1997
02-Jun-1997	IDS - suppl IDS	02-Jun-1997	02-Jun-1997	02-Jun-1997
27-Jun-1997	IDS - suppl IDS	27-Jun-1997	27-Jun-1997	27-Jun-1997
04-Sep-1998	IDS - suppl IDS	04-Sep-1998	04-Sep-1998	04-Sep-1998
17-Mar-1999	IDS - suppl IDS	17-Mar-1999	17-Mar-1999	17-Mar-1999
12-Oct-1999	Ext of Time Requested	12-Oct-1999	12-Oct-1999	12-Oct-1999
09-Jun-1999	Respond to Official Action	09-Nov-1999	09-Nov-1999	12-Oct-1999
23-Nov-1999	R116 Response to First Due	23-Jan-2000	23-Jan-2000	23-Feb-2000
23-Nov-1999	Notice of Appeal Due	23-Feb-2000	23-May-2000	15-Mar-2000
	CPA App'n. Filed	15-Mar-2000	15-Mar-2000	15-Mar-2000
	Suppl. Info. Disc. State.	15-Mar-2000	15-Mar-2000	15-Mar-2000
08-Sep-2003	Status Inquiry	08-Sep-2003	08-Sep-2003	08-Sep-2003
	File IDS per 11/13/03 agent let	05-Dec-2003	05-Dec-2003	18-Nov-2003
09-Sep-2004	Supplemental IDS Filed	09-Sep-2004	09-Sep-2004	09-Sep-2004
15-Sep-2004	Letter to PTO	15-Sep-2004	15-Sep-2004	15-Sep-2004
06-Aug-2008	Petition Filed	06-Aug-2008	06-Aug-2008	06-Aug-2008
06-Aug-2008	Request Continued Examination	06-Aug-2008	06-Aug-2008	06-Aug-2008
	Advisory Action Received	29-Feb-2000	29-Feb-2000	
	PTO lost file awaiting OA	15-Jul-2002	15-Jul-2002	
12-Sep-2008	Decision on Petition - Dismiss		12-Sep-2008	

Updated on 08/04/2008 YYY Date Printed 15 Sep 2008

77702/23

77702/23

Page 1 of 2

IPSCdotNet
Kenyon & Kenyon

Patent Jacket Data Sheet

10-Sep-2008 Response Re Petition due

10-Nov-2008 10-Mar-2009

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MAR 10 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Koji SATO, et al.
Application No. 08/750,641
Filing Date : 16 December 1996
Title : SCHEDULE SETTING AND PROCESSING SYSTEM
Art Unit : Office of Petitions
Examiner : L. Walsh

**Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

**DECLARATION OF
SHAWN W. O'DOWD**

I, the undersigned, Shawn W. O'Dowd, make this declaration in support of the Renewed Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR § 1.137(b) ("Renewed Petition") for the above identified application.

1. Since about June 12, 1989, I have served as an employee and a partner of Kenyon & Kenyon LLP ("Kenyon") in Kenyon's Washington, DC and San Jose offices.

2. During my employment and tenure as a partner at Kenyon, I had numerous responsibilities, including prosecuting patent applications for Toyota Jidosha Kabushiki Kaisha ("Toyota"), the assignee of U.S. Patent Application Serial No. 08/750,641 ("641").

3. On or about July of 2007, I was docketed as a supervising partner for the '641 application. I was docketed as a supervising partner because of the retirement of a prior supervising attorney/partner, John C. Altmiller.

4. Prior to July of 2007, I had prosecuted and/or supervised the prosecution of numerous other Toyota prosecution matters.

5. On August 8, 2008, I filed a petition under 37 CFR 1.137(b) (the "Original Petition"), indicating that any delay in paying the issue fee in '641 was unintentional.

6. The USPTO mailed a Dismissal relating to the Original Petition on September 10, 2008.

7. I had several questions regarding the Dismissal, and attempted to contact Examiner Walsh regarding the same; however, Examiner Walsh was away from her usual examining functions for much of September and October (e.g., for extended training). On October 24, 2008, I was able to discuss the petition with Examiner Walsh.

8. My primary concern was the Examiner's many requirements relating to "all persons . . . having firsthand knowledge of the circumstances surrounding the protracted delay," such as the requirement for statements and "[c]opies of any correspondence relating to the filing, or to not filing a further reply to the outstanding Office action." (See Dismissal at 2-3.) After the discussion with Examiner Walsh on October 24, 2008 involving the facts and witnesses available to us at this time, Examiner Walsh indicated that especially in light of the fact that only the payment of an issue fee was at issue in this case, it would not be necessary at this time to go to extraordinary measures to get statements from all persons having firsthand knowledge of the circumstances surrounding the delay.

9. Nevertheless, I, as well as associates at Kenyon, have made extensive efforts in the preparation of the Renewed Petition. We have intensely examined the paper file wrapper of the '641 application to determine the identity of the various persons at Kenyon who worked on the prosecution of '641 application and to compile the many efforts by these Kenyon attorneys and staff to further prosecution of the '641 application. This investigation included contacting several former Kenyon employees, including, *inter alia*, an attorney who was no longer engaged in the active practice of patent law, and an attorney who worked for a law firm in Tokyo, Japan. Through contacting these former Kenyon employees, Applicants are able to provide further detail regarding the events which ultimately resulted in the delay in this case.

10. In October and November of 2008, I contacted Mark Neblett regarding '641. He had no specific information or knowledge relating to '641, the abandonment thereof, and the discovery of the same. However, as he could give some insight as to the circumstances surrounding the filing of the File Reconstruction request of March 23, 2001, Mr. Neblett has submitted a declaration in support of the Renewed Petition.

11. In October of 2008, I contacted John Altmiller, a Kenyon partner listed on the '641 declaration, regarding '641. He had no specific information or knowledge relating to '641, the abandonment thereof, and the discovery of the same. However, as he was a supervising attorney for the case until his retirement in or about March of 2007, Mr. Altmiller has submitted a declaration in support of the Renewed Petition.

12. In November of 2008, I contacted Sterlon Mason, a former prosecuting associate who resigned from Kenyon on or about July 21, 2000, regarding '641. He had no specific information or knowledge relating to '641, the abandonment thereof, and the discovery of the same.

13. In November of 2008, I contacted Frank Pietrantonio, a partner who resigned from Kenyon on or about May 1, 2000, regarding '641. He had no specific information or knowledge relating to '641, the abandonment thereof, and the discovery of the same. While his name was listed on the '641 declaration, Frank Pietrantonio indicated to me that he was not substantively involved with any Toyota prosecutions.

14. In November of 2008, I contacted Japanese counsel for Toyota regarding '641. Japanese counsel for Toyota reviewed their file history for '641 and confirmed that Toyota has always been desirous of obtaining a patent related to '641, and that no instructions had been received or given to cease prosecution of '641.

15. I have spoken with Daniel Shanley, a current Kenyon associate regarding '641. Prior to July 10, 2008, he had no specific information or knowledge relating to '641, the abandonment thereof, and the discovery of the same. Mr. Shanley has submitted a declaration in support of the Renewed Petition.

16. I have spoken with Ingrid Hodge, a current Kenyon employee regarding '641. Prior to July 10, 2008, she had no specific information or knowledge relating to '641, the abandonment thereof, and the discovery of the same. Ms. Hodge has submitted a declaration in support of the Renewed Petition.

17. I have spoken with Judith Russo, a current Kenyon employee regarding '641. Prior to July 10, 2008, she had no specific information or knowledge relating to '641, the

abandonment thereof, and the discovery of the same. Ms. Russo has submitted a declaration in support of the Renewed Petition.

18. Based on my review of a copy of USPTO's filewrapper for '641, the USPTO mailed an Advisory Action regarding '641 to Kenyon on February 29, 2000. The address on the cover page of the Advisory Action listed Kenyon's address as "1025 CONNECTICUT AVENUE NW." (Exh. 1.)

19. On February 29, 2000, the offices of Kenyon were no longer located at "1025 CONNECTICUT AVENUE NW" in Washington, DC. Less than one year prior to February 29, 2000, in March of 1999, Kenyon had moved its offices to 1500 K Street, NW, also in Washington DC.

20. As evidenced by an entry into Kenyon's computerized docketing system, the Advisory Action of February 29, 2000 was received by Kenyon. (Exh. 2.)

21. In response to the Advisory Action, Applicants filed a Continued Prosecution Application (CPA) with the USPTO on March 15, 2000, along with a fee of \$800. (Exh. 3.) The mailing of the CPA was entered into Kenyon's computerized docketing system. (Exh. 2.)

22. The Transmittal Form for the CPA filed March 15, 2000 listed "1500 K Street, N.W." as the address of Kenyon. (Exh. 3.)

23. Based on my review of a copy of Kenyon's filewrapper for '641, on March 29, 2000, Applicants filed a Preliminary Amendment with the USPTO via facsimile. (Exh. 4.) The Preliminary Amendment faxed to the USPTO on March 29, 2000 listed "1500 K Street, N.W." as the address of Kenyon. (Exh. 4.)

24. Based on my review of a copy of USPTO's filewrapper for '641, on April 17, 2000, the USPTO mailed a Notice of Allowability to Kenyon at "1025 CONNECTICUT AVENUE NW" in Washington, DC. The Notice of Allowability was "responsive to amendment filed 3/29/00." (Exh. 5.)

25. Prior to April 17, 2000, staff at Kenyon had been instructed to change the correspondence addresses of the many cases then prosecuted by Kenyon's Washington, DC office. However, by April 17, 2000, all cases had not yet been processed, including '641.

26. Based on my review of the docket report for '641 (Exh. 2), Kenyon did not receive the Notice of Allowability.

27. Based on my review of a copy of USPTO's filewrapper for '641, a copy of the "ISSUE FEE TRANSMITTAL" form is contained within the USPTO filewrapper for '641. The copy is not signed. Furthermore, the copy is stamped "MATCH & RETURN" and "RECEIVED APR 17 2000 TC 3600 MAILROOM." (Exh. 6.)

28. The Notice of Allowability indicates that an issue fee of \$1210 was due on July 17, 2000. (Exh. 5.)

29. Based on my review of the file wrapper and docket report for '641 (Exh. 2), there is no evidence that Kenyon paid or attempted to pay a \$1210 issue fee for '641.

30. Based on my review of a copy of USPTO's filewrapper for '641, on September 13, 2000, the USPTO mailed a Notice of Abandonment to Kenyon at "1025 CONNECTICUT AVENUE NW" in Washington, DC. The Notice of Abandonment was stamped with a message "ABANDONMENT CONTACT PERSON IS: TOM HAWKINS 305-8380." (Exh. 7.)

31. To my knowledge, there is no evidence in Kenyon files, nor in the '641 USPTO file wrapper that Tom Hawkins, or anyone else at the USPTO, attempted to contact Kenyon via telephone prior to mailing the Notice of Abandonment.

32. Based on my review of the docket report for '641 (Exh. 2), Kenyon did not receive the Notice of Abandonment.

33. Based on my review of a copy of Kenyon's filewrapper for '641, on October 2, 2000, John C. Altmiller (Reg. No. 25,951) of Kenyon signed a Change of Correspondence Address changing the correspondence address of '641 to that of customer number 23838. (Exh. 8.)

34. Based on my review of a copy of USPTO's filewrapper for '641, the Change of Correspondence Address was stamped as received by OIPE on October 3, 2000, as received by Technology Center 2800 on October 4, 2000, and as received by Technology Center 2700 on October 6, 2000. There is no other evidence in the '641 USPTO filewrapper that the Change of Correspondence Address signed October 2, 2000 was considered by the USPTO. (Exh. 9.)

35. Based on my review of a copy of Kenyon's filewrapper for '641, on October 30, 2000, Robert Hails (Reg. No. 39,702) of Kenyon transmitted by facsimile a second Change of Correspondence Address to Examiner Olga Hernandez. The second Change of Correspondence Address form indicated that future communications should be sent to John C. Altmiller of Kenyon at 1500 K Street, N.W. in Washington, DC. (Exh. 10.)

36. Based on my review of a copy of the USPTO's filewrapper for '641, the second Change of Correspondence Address was stamped as received by Group 3600 on October 30, 2000. This paper is marked as paper #19, initialed by DRS, and dated June 12 of an unknown year (the retrieved copy reads "6-12-0" – the final number appears to have been cut-off upon copying). (Exh. 11.)

37. Based on my review of a copy of Kenyon's filewrapper for '641, an Associate Power of Attorney appointing "John C. Altmiller (Reg. No. 25,951) and other registered practitioners of Kenyon included in [Customer Number 23858]" was stamped as received by the USPTO on December 11, 2000. The paper, which had Kenyon's New York office address at the bottom of the page, is dated November 6, 2000, and is signed by Edward W. Greason (Reg. No. 18,918). (Exh. 12.)

38. Based on my review of the '641 USPTO filewrapper, there is no evidence that the Associate Power of Attorney was considered by the USPTO.

39. Based on my review of a copy of Kenyon's filewrapper for '641, on January 12, 2001, Cathy Ryan at Kenyon learned from a "[c]onversation w/ group receptionist" that the USPTO file for '641 was reported lost on November 27, 2000, the last known destination for the file being "the file repository." Cathy Ryan also left a message with Examiner O. Hernandez at

10:45 AM. The Examiner called back at 2:45 "to verify that file is in Depository." A note written next to the record of the 10:45 message indicates "Power to Inspect." (Exh. 13.)

40. Based on my review of a copy of Kenyon's filewrapper for '641, a "POWER TO INSPECT AND MAKE COPIES" was signed by John C. Altmiller on February 7, 2001. A hand written note on the top of the document indicates "LOST 1/16/01." A sticky note signed by "Cathy" attached to the document indicates "Denise/Jay to go over 2/8/01." (Exh. 14.)

41. Based on my review of a copy of Kenyon's filewrapper for '641, a File Reconstruction request was stamped as received by "Licensing & Review" on March 23, 2001. The paper indicates:

We have been informed by the Office that the U.S. Patent and Trademark Office's file for [08/750,641] has been lost. Please find attached a copy of the relevant documents forming the file history for this application from the applicant's files for use in reconstructing the Office's file.

Please reconstruct the file. Thank you for your attention to this matter. Please contact [Mark H. Neblett (Reg. No. 42,028)], for any questions.

The paper was signed by Mark H. Neblett. The postcard is dated March 22, 2001. (Exh. 15.)

42. Based on my review of a copy of USPTO's filewrapper for '641, there is no evidence that the File Reconstruction request was considered by the USPTO.

43. Based on my review of Kenyon's docketing records, on July 15, 2002, an entry was made into the electronic docketing system at Kenyon indicating "PTO lost file-awaiting OA." (Exh. 2.)

44. According to the Human Resources department of Kenyon, on July 31, 2003, Mark H. Neblett resigned from employment at Kenyon.

45. Based on my review of a copy of Kenyon's filewrapper for '641, a paper entitled "STATUS INQUIRY" signed by John C. Altmiller was filed with the USPTO. The paper, which is dated September 8, 2003, "respectfully request[s] that the Examiner inform Applicants of the status of the application." The paper further indicates that "The U.S. Patent and Trademark Office notified Applicants that the subject file had been lost and, accordingly, Applicants filed a copy of the relevant documents forming the file history in a File Reconstruction on March 23,

2001.” The paper also authorized the Commissioner to “charge any fee relevant to this filing to Kenyon & Kenyon Deposit Account No. 11-0600.” The paper has Kenyon’s 1500 K Street, N.W. address at the bottom of the page. (Exh. 16.)

46. A stamped postcard confirming the receipt of the Status Inquiry of September 8, 2003 is also present in Kenyon’s filewrapper for ‘641. (Exh. 17.)

47. Based on my review of a copy of USPTO’s filewrapper for ‘641, there is no evidence the Status Inquiry of September 8, 2003 was considered by the USPTO.

48. Based on my review of a copy of Kenyon’s filewrapper for ‘641, according to a postcard, an Information Disclosure Statement and accompanying papers was stamped as received by the USPTO (OIPE) on November 18, 2003. (Exh. 18.)

49. Based on my review of a copy of the USPTO’s filewrapper for ‘641, an Information Disclosure Statement (IDS) signed by William E. Curry (Reg. No. 43,572) and dated November 18, 2003 was filed by Kenyon. The IDS lists Kenyon’s 1500 K Street, N.W. address. The IDS is stamped as being received by Group 3600 on November 24, 2003. According to the IDS, as well as the cover of the ‘641 USPTO filewrapper, the IDS was designated as Paper #20. The IDS indicates that the designation of “#20” was given on February 13, 2004 (“2/13/4”). (Exh. 19.)

50. Based on my review of a copy of Kenyon’s filewrapper for ‘641, according to a postcard, an Information Disclosure Statement and accompanying papers was stamped as received by the USPTO (OIPE) on September 9, 2004. (Exh. 20.)

51. Based on my review of a copy of the USPTO’s filewrapper for ‘641, an Information Disclosure Statement (IDS) signed by William E. Curry (Reg. No. 43,572) and dated September 9, 2004 was filed by Kenyon. The IDS lists Kenyon’s 1500 K Street, N.W. address. The IDS is stamped as being received by Group 3600 on September 15, 2004. According to the IDS, as well as the cover of the ‘641 USPTO filewrapper, the IDS was designated as Paper #21. (Exh. 21.)

52. Based on my review of a copy of Kenyon's filewrapper for '641, a paper entitled "REQUEST FOR STATUS" signed by William E. Curry (Reg. No. 43,572) is present in Kenyon's paper files. The paper, which is dated September 15, 2004, indicated:

A request for continued prosecution with an Information Disclosure Statement was filed in this case on 15 March 2000. A preliminary amendment was faxed to the Examiner on 29 March 2000. A change of correspondence address was filed on 30 October 2000. Thereafter, a copy of the entire file was submitted for re-construction of the lost file on 23 March 2001. A status inquiry was filed on 8 September 2003. Information Disclosure Statements were filed on 18 November 2003 and 9 September 2004, respectively.

It is respectfully requested that the undersigned [William E. Curry] be informed when an Office Action or other communication from the Patent Office may be expected in this case.

The paper has Kenyon's 1500 K Street, N.W. address at the bottom of the page. A stamped postcard confirms that the USPTO received the paper on September 15, 2004. (Exh. 22.)

53. Based on my review of a copy of USPTO's filewrapper for '641, there is no evidence that the Request for Status of September 15, 2004 was considered by the USPTO.

54. According to Kenyon's Human Resources department, in January 2007, William E. Curry's employment ended at Kenyon.

55. According to Kenyon's human resources department, on July 31, 2007, John C. Altmiller resigned from employment at Kenyon.

56. Contemporaneous with John C. Altmiller's resignation, I was docketed as the attorney responsible for '641.

57. Based on my review of a copy of USPTO's filewrapper for '641, on June 27, 2008, Japanese patent counsel for Applicants' faxed a letter to Kenyon inquiring as to the status of '641. The communication was addressed to William E. Curry.

58. Based on my review of a copy of USPTO's filewrapper for '641, on July 10, 2008, Japanese patent counsel for Applicants' faxed a reminder communication to Kenyon.

59. I did not know or even suspect that the '641 patent was abandoned until on or after July 10, 2008. To my recollection, Daniel Shanley, informed me of the abandoned status of '641, after made an investigation into the status of '641.

60. On or about July 23, 2008, I took primary responsibility for filing a petition to revive with the USPTO.

61. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the Notice of Allowance for '641 was not received by Kenyon, but rather, was returned to the USPTO as undeliverable.

62. Based on the above information, as well as my recollection regarding the prosecution of Toyota cases, it is my conclusion that the Notice of Abandonment for '641 was similarly not received by Kenyon.

63. I do not recall of a case during my employment at Kenyon where I requested the Office to reconstruct an application file after that application had been abandoned.

64. Prior to July 10, 2008, I do not recall the Office or anyone at Kenyon advising me that '641 had been abandoned.

65. I do not recall the client or anyone at Kenyon ever requesting me to allow '641 to become abandoned.

66. To my knowledge and belief, the entire delay in filing the required reply for '641 from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

I declare that all of the above statements made based on my own knowledge are true and that all of the above statements that were made on information and belief are believed to be true, and further declare that these statements are made with the knowledge that knowing, willful and materially false statements, as are defined under Section 1001 of Title 18 of the United States Code, are punishable by fine, imprisonment, or both under Section 1001, and that such statements may affect the validity of any patent issuing from '641 if the application is revived.

Dated: 12/10/08

Shawn W. O'Dowd
Shawn W. O'Dowd

EXHIBIT 1 TO O'DOWD DECLARATION

08/750641

APPROVED FOR LICENSE ☐

INITIALS

SP95/0345

Date
Entered
or
Counted

PATENT APPLICATION



08/750641

Date
Received
or
Mailed

1. Application 14 papers.

2. IDS

3. IDS

4. IDS

5. Pre-Admin

6. IDS

7. Info Mined State

8. Pre-Admin

9. Pre-Admin

10. Pre-Admin

11. Pre-Admin

12. Pre-Admin

13. Pre-Admin

14. Pre-Admin

15. Pre-Admin

16. Notice of Allowance

17. Notice of Allowance

18. Notice of Abandonment

19. Change of Address

20. IDS

21. IDS

22. Request for Access

23.

24.

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FEB 14 1997

3-18-97

6-2-97

12-16-97

1-27-97

2-24-97

1-17-99

6-6-99

6-12-99

11-23-99

2-23-00

2-29-00

3-15-00

3-15-00

4-17-00

4-17-00

SEP 13 2000

10-30-00

11-18-00

9/10/01

7/11/01

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark OfficeAddress: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILED DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/750,641 12/16/95 SATO

K 77792/23

EXAMINER

PM82/C229

HERNANDEZ, O

FRANK PIETRANTONIO
KENYON & KENYON
1025 CONNECTICUT AVENUE NW
WASHINGTON DC 20036

ART UNIT

PAPER NUMBER

3561

DATE MAILED: 02/29/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action	Application No. 08750,941	Applicant(s) Sato et al.
	Examiner Olga Hernandez	Group Art Unit 3601

THE PERIOD FOR RESPONSE: (check only a) or b))

a) ☒ expires 3 months from the mailing date of the final rejection.

b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on _____ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on May 23, 1999 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

☐ The proposed amendment(s):

- ☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
- ☐ will not be entered because:
 - ☐ they raise new issues that would require further consideration and/or search. (See note below).
 - ☐ they raise the issue of new matter. (See note below).
 - ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
 - ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

☐ Applicant's response has overcome the following rejection(s): _____

☐ Newly proposed or amended claims _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:
applicant arguments are not directly to the claimed subject matter.

☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: _____

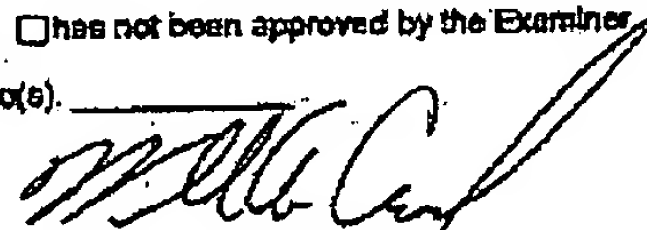
Claims objected to: 7-10

Claims rejected: 1-6

☐ The proposed drawing correction filed on _____ ☐ has ☐ has not been approved by the Examiner

☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Other _____


 WILLIAM A. CUCHLINSKI, JR.
 SUPERVISORY PATENT EXAMINER
 TECHNOLOGY CENTER 3600

U. S. Patent and Trademark Office
PTO-303 (Rev. 8-95)

Advisory Action

Part of Paper No. 13

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MAR 10 2009

EXHIBIT 2 TO O'DOWD DECLARATION

IPSSearch
Kenyon & Kenyon

Patent Jacket Data Sheet

TOYOTA
7/19/1993

S. O'DOWD
DANIEL G. SHANLEY

P25830 USW
Client Ref
Office DC

I. SCHEUGENPFLUG

Title SCHEDULE SETTING AND PROCESSING SYSTEM

Prosecution Particulars			Parties	
Prosecution Status	Live - Pending		Applicant/Regd.	TOYOTA MOTOR KABUS
Priority Claimed	6-298290	01-Dec-1994 Japan	Inventor	KIZU, Masafumi
Parent	PCT/JP95/02459	01-Dec-1995 WO	Inventor	MORITA, Makoto
Application	08/750641	01-Dec-1995 US (PCT)	Inventor	SATO, Koh
Filed on		16-Dec-1996	Inventor	YAMASHITA, Masanobu
Publication			Reel/Frame	8387 / 229
Allowed				
Grant Fees Paid				
Grant				
Expiry				
Agent	KENYON N.Y.			

Renewal Particulars				
Renewal Status Pre-Grant				
Annulity				
Next Due				
Next Cost				
Cost Restrict Life				
Comm Date	Communication / Action	Due Date	Last Date	Response Filed
18-Dec-1996	30 MONTH NATIONAL PHASE APPLIC	18-Dec-1996	18-Dec-1996	18-Dec-1996
16-Dec-1996	IDS Due	16-Dec-1996	16-Dec-1996	16-Dec-1996
16-Dec-1996	Preliminary Amendment	16-Dec-1996	16-Dec-1996	16-Dec-1996
16-Dec-1996	Recordal	16-Dec-1996	16-Dec-1996	16-Dec-1996
14-Feb-1997	NOTICE OF ACCEPTANCE OF APPLIC			
14-Mar-1997	Filing Receipt			
18-Mar-1997	IDS -- supp ¹ IDS	18-Mar-1997	18-Mar-1997	18-Mar-1997
07-May-1997	Recordal	07-May-1997	07-May-1997	07-May-1997
02-Jun-1997	IDS -- supp ¹ IDS	02-Jun-1997	02-Jun-1997	02-Jun-1997
27-Jun-1997	IDS -- supp ¹ IDS	27-Jun-1997	27-Jun-1997	27-Jun-1997
04-Sep-1998	IDS -- supp ¹ IDS	04-Sep-1998	04-Sep-1998	04-Sep-1998
17-Mar-1999	IDS -- supp ¹ IDS	17-Mar-1999	17-Mar-1999	17-Mar-1999
12-Oct-1999	Ext of Time Requested	12-Oct-1999	12-Oct-1999	12-Oct-1999
09-Nov-1999	Respond to Official Action	09-Nov-1999	09-Nov-1999	12-Oct-1999
23-Jan-2000	Response to Final Due	23-Jan-2000	23-Jan-2000	23-Feb-2000
23-Feb-2000	Notice of Appeal Due	23-Feb-2000	23-May-2000	15-Mar-2000
15-Mar-2000	CPA App'n. Filed	15-Mar-2000	15-Mar-2000	15-Mar-2000
15-Mar-2000	Suppl. Info. Disc. State.	15-Mar-2000	15-Mar-2000	15-Mar-2000
08-Sep-2003	Status Inquiry	08-Sep-2003	08-Sep-2003	08-Sep-2003
05-Dec-2003	File IDS per 11/13/03 agent let	05-Dec-2003	05-Dec-2003	18-Nov-2003
09-Sep-2004	Supplemental IDS Filed	09-Sep-2004	09-Sep-2004	09-Sep-2004
15-Sep-2004	Letter to PTO	15-Sep-2004	15-Sep-2004	15-Sep-2004
05-Aug-2008	Petition Filed	05-Aug-2008	05-Aug-2008	05-Aug-2008
06-Aug-2008	Request Continued Examination	06-Aug-2008	06-Aug-2008	06-Aug-2008
	Advisory Action Received	29-Feb-2000	29-Feb-2000	
	PTO lost file-awaiting OA	15-Jul-2002	15-Jul-2002	
12-Sep-2008	Decision on Petition - Dismiss		12-Sep-2008	

Updated on 03/10/2009. Printed: 15 Sep 2008

77702/22

Page 1 of 2

IPSGuestNet
Kenyon & Kenyon

Patent Jacket Data Sheet

10-Sep-2008 Response Re Petition due

10-Nov-2008 10-Mar-2009

EXHIBIT 3 TO O'DOWD DECLARATION

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MAR 10 2009

FORM PTO/SB/29 (12/97)

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

**CONTINUED PROSECUTION APPLICATION (CPA)
REQUEST TRANSMITTAL FORM**
37 C.F.R. §1.53(d)

DOCKET NO. 77792/23

ANTICIPATED CLASSIFICATION OF THIS APPLICATION:

CLASS	SUBCLASS	EXAMINER	ART UNIT
		O. Hernandez	3661

PRIOR APPLICATION 08/750,641

Address to:
Assistant Commissioner for Patents
Washington D.C. 20231
Box CPA

NAMED INVENTORS: K. SATO et al.

This is a request for filing a continuation application under 37 C.F.R. § 1.53(d) (continued prosecution application (CPA)) of pending prior application Serial No. 08/750,641, filed on December 16, 1996, entitled SCHEDULE SETTING AND PROCESSING SYSTEM.

1. The filing fee is calculated below:

	NUMBER FILED	NUMBER EXTRA	RATE (\$)	FEE (\$)
BASIC FEE				690.00
TOTAL CLAIMS	10	- 10 -	0	0.00
INDEPENDENT CLAIMS	1	- 1 -	0	0.00
MULTIPLE DEPENDENT CLAIM PRESENT			220.00	
Number extra must be zero or larger			TOTAL	690.00
If Applicant is a small entity under 37 C.F.R. §§ 1.9 and 1.27, then divide total fee by 2, and enter amount here.				SMALL ENTITY TOTAL

2. Please charge the required application filing fee of \$690.00 to the deposit account of Kenyon & Kenyon, deposit account number 11-0600.

3. The Commissioner is authorized to charge \$110.00 for one-month Extension of Time.

03/16/2009 08:12:01 00000000 110600 08730541

01 FT:12 690.00 CH

02 FT:11 110.00 CH

EXHIBIT 4 TO O'DOWD DECLARATION**RECEIVED
CENTRAL FAX CENTER****MAR 10 2009*******
TRANSMISSION REPORT

WED: MAR 29 2000 12:30

DOCUMENT #	TIME STORED	TIME SENT	DURATION	PAGE(S)	MODE	RESULT
3760365-120	3. 29 12:27	3. 29 12:27	2' 69"	6	ECM	OK

DESTINATION	DST. TEL #
97033053597	97033053597

**KENYON & KENYON**

1500 K Street, NW
 Washington, DC 20005
 (202)220-4200
 Fax: (202)220-4201

FACSIMILE COVER SHEET**TO: EXAMINER OLGA HERNANDEZ****FAX NO: 703 305-3597****DATE: March 29, 2000**

FROM: Sterlon Mason
Kenyon & Kenyon

SUBJECT: PRELIMINARY AMENDMENT TO CPA FOR U.S. APPLN. SERIAL NO.
08/750,641

CLIENT/MATTER NO.: 77792/23**NO. OF PAGES INCLUDING COVER:**

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MESSAGE:

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CENTRAL FAX CENTER****MAR 10 2009****PATENT
Docket No. 77792/23****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventors : Koji SATO et al.
Serial No. : 08/750,641
Filed : December 16, 1996
For : SCHEDULE SETTING AND PROCESSING
SYSTEM
Group Art Unit : 2316
Examiner : O. Hernandez

ASSISTANT COMMISSIONER FOR PATENTS
Washington, D.C. 20231

PRELIMINARY AMENDMENT

S I R:

By Office Action dated November 23, 1999, pending claims 1-6 were finally rejected and claims 7-10 were objected to.

Applicants filed a Response to Final Office Action Pursuant to 37 C.F.R. §1.116 on February 23, 2000, submitting remarks to traverse the rejections. However, by Advisory Action dated February 29, 2000, the rejections were maintained.

Applicants therefore filed a Request for a Continued Prosecution Application (CPA) pursuant to 37 C.F.R. §1.53(d) on March 15, 2000.

Please enter the following amendments prior to examination of the above-identified application.

IN THE CLAIMS:

Please amend claim 1 as follows. All of the claims have been presented for the Examiner's convenience.

1. (Three Times Amended) A schedule-set-up management system comprising:
inputting means for entering at least destination information and desired arrival time
information;

Serial No. 08/750,641

Docket: 77792/23

frame-preparing means for preparing a basic frame of a schedule including types of intermediate and final locations, and a transfer order, indicating a chronological sequence of events in said basic frame based on said destination information and desired arrival time information; and

schedule-preparing means for accessing a data base to retrieve specific facilities fitting said basic frame, thereby preparing a schedule in which intermediate and final locations are specified.

2. (Unchanged) The schedule-set-up management system is accordance with Claim 1, wherein said frame-preparing means selects one basic frame of a schedule which fits said destination information and desired arrival time information from a plurality of basic frames pre-stored in a memory device.

3. (Unchanged) The schedule-set-up management system in accordance with Claim 1, wherein said inputting means and frame-preparing means are disposed in a terminal device, said schedule-preparing means disposed in a host device, said terminal device and host device are connected via a communication line, said terminal device transmits said basic frame- prepared by said frame preparing means to said host device, said host device transmits said schedule prepared by said schedule-preparing means to said terminal device.

4. (Unchanged) The schedule-set-up management system in accordance with Claim 3, wherein said terminal device has a display means for displaying: a touch switch used for entering said destination information and desired arrival time information; said prepared basic frame; and said transmitted schedule.

5. (Unchanged) The schedule-set-up management system in accordance with Claim 1, further comprising:

route-searching means for searching an optimum route for carrying out said schedule using map data.

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6. (Unchanged) The schedule-set-up management system in accordance with claim 3, wherein said terminal device disconnects the communication line connecting with said host device after transmitting said basic frame, and reconnects the communication line connecting with said host device after completing the preparation of said schedule in order to receive said schedule.

7. (Unchanged) The schedule-set-up management system in accordance with Claim 1, further comprising:

a watch center for watching the implementation of said schedule, wherein said schedule-preparing means re-prepares a schedule based on information from said watching center.

8. (Unchanged) The schedule-set-up management system in accordance with Claim 7, wherein said watching center has information-obtaining means for obtaining position information of a schedule implementer, information of the intermediate locations in said schedule and traffic information between the intermediate locations, the obtained information being supplied to said schedule-preparing mean.

9. (Unchanged) The schedule-set-up management system in accordance with Claim 8, wherein said information-obtaining means of said watching center further obtains weather information, and supplies the obtained weather information to said schedule-preparing means.

10. (Unchanged) The schedule-set-up management system in accordance with Claim 7, wherein said schedule-preparing means evaluates the influence of the information supplied from said watching center of the implementation of said schedule, and again prepares a schedule based on evaluation results.

REMARKS

The final Office Action mailed November 23, 1999 and the Advisory Action mailed February 29, 2000 have been carefully reviewed and the foregoing amendments and

Serial No. 08/750,641
Docket: 77792/23

following remarks are made thereto. Claims 1-10 are presently pending in this application for consideration.

As a preliminary matter, Applicants thank Examiner Hernandez for her courtesies extended to Applicants' representative during the March 23, 2000 telephonic interview. The substance of the interview is embodied in the following remarks.

The final Office Action rejects claims 1-4 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,237,499 to Garback in view of travel planning system (travelersnet.com) [hereinafter "Travelers"] and U.S. Patent No. 4,862,357 to Ahlstrom et al. [hereinafter "Ahlstrom"] and claim 5 under the same as being unpatentable over the combination of Garback and Travelers in further view of U.S. Patent No. 5,757,289 to Nimura et al. [hereinafter "Nimura"]. In addition, the Advisory Action indicates that Applicants' arguments were not directed to the claimed subject matter.

Applicants respectfully submit that the amended claims are patentably distinguishable over the cited references as required by §103. Applicants further submit that the cited references fail to disclose "a frame-preparing means for preparing a basic frame of a schedule including types of intermediate and final locations, and a transfer order indicated a chronological sequence of events in said basic frame, based on said destination information and desired arrival time information" as recited in independent claim 1. Thus, these claims are allowable over the cited references.

A "transfer order" refers to a chronological sequence of events in a basic frame. One example of such a sequence is described in the specification, on page 11, lines 8-15, in which the transfer order of events is as follows: departure → walk → lunch → amusement park → night view → return back. Another example is also shown on page 12. The basic frame of the present invention consists of a type of location and the transfer order, and a more specific schedule is prepared based on this basic frame. The idea of the present invention in which the basic frame comprising the type and order is initially determined is not disclosed in the cited references.

Conclusion

Examination of this application in light of the foregoing amendment is respectfully requested. The Examiner is invited to contact the undersigned at (202) 220-4240 to discuss

Serial No. 08/750,641

Docket: 77792/23

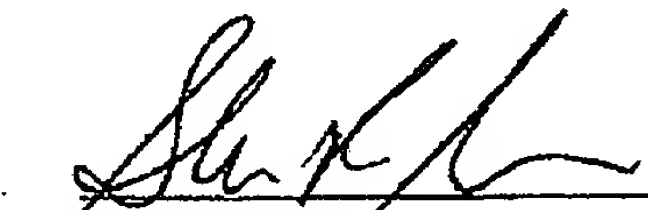
any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. §1.16 or 1.17 to Deposit Account No. 11-0600.

Respectfully submitted,

KENYON & KENYON

Dated: March 29, 2000


Sterlon Mason
Reg. No. 41,179

KENYON & KENYON
1500 K Street, N.W.
Washington, DC 20005
tel : 202/220-4200
fax: 202/220-4201

EXHIBIT 5 TO O'DOWD DECLARATION

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MAR 10 2009

Notice of Allowability	Application No.	Applicant(s)	
	08/750,641	SATO ET AL.	
	Examiner	Art Unit	
	Olga Hernandez	3881	

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance and Issue Fee Due or other appropriate communication will be mailed in due course.

1. ☒ This communication is responsive to amendment filed on 3/23/09.

2. ☒ The allowed claim(s) is/are 1-12.

3. ☐ The drawings filed on _____ are acceptable.

4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some c) ☐ None of the CERTIFIED copies of the priority documents have been

1. ☐ received.

2. ☐ received in Application No. (Series Code / Serial Number) _____.

3. ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

A SHORTENED STATUTORY PERIOD FOR REPLY to comply with the requirements noted below is set to EXPIRE THREE MONTHS FROM THE 'DATE MAILED' of this Office Action. Failure to timely comply will result in ABANDONMENT of this application. Extensions of time may be available under the provisions of 37 CFR 1.136(a).

6. ☐ Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient. A SUBSTITUTE OATH OR DECLARATION IS REQUIRED.

7. ☒ Applicant MUST submit NEW FORMAL DRAWINGS

(a) ☐ Because the originally filed drawings were declared by applicant to be informal.

(b) ☐ Including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-949) attached

1) ☐ hereto or 2) ☒ to Paper No. 8

(c) ☐ Including changes required by the proposed drawing correction filed _____ which has been approved by the examiner.

(d) ☐ Including changes required by the attached Examiner's Amendment / Comment.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the reverse side of the drawings. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

8. ☐ Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL

Any reply to this letter should include, in the upper right hand corner, the APPLICATION NUMBER (SERIES CODE / SERIAL NUMBER), if applicant has received a Notice of Allowance and Issue Fee Due, the ISSUE BATCH NUMBER and DATE of the NOTICE OF ALLOWANCE should also be included.

Attachment(s)

1 ☒ Notice of References Cited (PTO-892)

3 ☐ Notice of Draftsperson's Patent Drawing Review (PTO-949)

6 ☒ Information Disclosure Statements (PTO-1449), Paper No. 14

7 ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

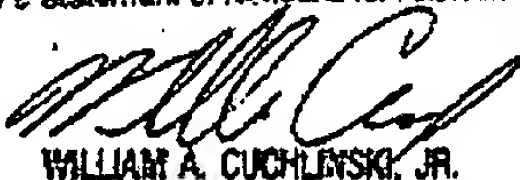
2 ☐ Notice of Informal Patent Application (PTO-152)

4 ☐ Interview Summary (PTO-413), Paper No. _____

6 ☐ Examiner's Amendment/Comment

8 ☒ Examiner's Statement of Reasons for Allowance

9 ☐ Other


 WILLIAM A. CUCHLEY, JR.
 SUPERVISORY PATENT EXAMINER
 TECHNOLOGY CENTER 3600

U.S. Patent and Trademark Office Notice of Allowability Part of Paper No. 18
 PTO-37 (Rev. 3-98)

EXHIBIT 6 TO O'DOWD DECLARATION

1560 PART B - ISSUE FEE TRANSMITTAL

Complete and mail this form, together with a fee, to: **Box 888888, Patent and Trademark Office, Washington, D.C. 20231**

WARNING: Instructions on this form should be used for transmitting the ISSUE FEE. Blocks 1 through 4 should be completed before submitting. All further correspondence including the Issue Fee should be sent to the address indicated below or directed otherwise in Block 1, by (a) enclosing a separate correspondence address, and/or (b) indicating a separate "FEE ADDRESS" for submission of the correspondence.

1. CORRESPONDENCE ADDRESS (Indicate any corrections in use Block 1)

FRANK PIETRANTONIO
KENYON & KENYON
1025 CONNECTICUT AVENUE, NW
WASHINGTON DC 20036

PM82/0417

2. CERTIFICATE OF MAILING

I hereby certify that this Issue Fee Transmittal is being deposited with the United States Postal Service with sufficient postage for this class and in an envelope addressed to the Box Issue Fee address above on the date indicated below.

Depositor's name: _____
Signature: _____
Date: _____

APPLICATION NO.	FILING DATE	TOTAL CLASS	EXAMINER AND GROUP ART UNIT	DATE MAILED
08/750,641	12/16/96	C10	HERNANDEZ, D	3661 04/17/00

File Name: SATO, 35-USA-154(b), term ext. n
Applicant: MATCH & RETURN

3. TITLE OF SCHEDULE SETTING AND PROCESSING SYSTEM INVENTION

ATTY'S DOCKET NO.	CLASS-SUBCLASS	BYCHG NO.	APPLN TYPE	SMALL ENTITY	FEE DUE	DATE DUE
2 77792/23	701-202.000	121	UTILITY	NO	\$1210.00	07/17/00

4. Change of correspondence address or indication of "Fee Address" (PFR 1.302). Use of PTO form and Customer Number are recommended, but not required.

☐ Change of correspondence address (or change of correspondence address from PTO/SB/122) attached.
☐ "Fee Address" indication (or "Fee Address" indication from PTO/SB/122) attached.

5. For printing on the patent front page, fill in:
(1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (filing as a member or registered attorney or agent) and the names of up to 3 registered patent attorneys or agents. If no name is listed, no name will be printed.

6. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THIS PATENT (PFR 1.304). PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the PTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE _____
(B) RESIDENCE (CITY & STATE OR COUNTRY) _____

Please check the appropriate assignee category indicated below (will not be printed on the patent):
☐ Individual ☐ corporation or other private group entity ☐ government

7. The following fee is due (make check payable to Commissioner of Patents and Trademarks):
☐ Issue Fee
☐ Advance Order - # of Copies _____

8. The following fee or deficiency in fees due should be charged to:
DEPOSIT ACCOUNT NUMBER _____
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☐ Advance Order - # of Copies _____

The COMMISSIONER OF PATENTS AND TRADEMARKS is requested to apply the Issue Fee to the application identified above.

(Authorized Signature) _____ Date: _____

NOTE: The Issue Fee will not be accepted from anyone other than the applicant or registered attorney or agent or the assignee or other party to whom an allowance is shown by the records of the Patent and Trademark Office.

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Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	PRINT NAMED APPLICANT	ATTORNEY DOCKET NO.
08/750,641	12/16/96	SATO	K 77792/23

FRANK PIETRANTONIO
KENYON & KENYON
1025 CONNECTICUT AVENUE NW
WASHINGTON DC 20036

7542/0913

EXAMINER

HERNANDEZ, O

ART UNIT

3661

PAPER NUMBER

18

DATE MAILED: 09/13/00

NOTICE OF ABANDONMENT

This application is abandoned in view of:

☐ Applicant's failure to timely file a proper response to the Office letter mailed on _____

☐ A response (with a Certificate of Mailing or Transmission of _____) was received on _____, which is after the expiration of the period for response (including a total extension of time of _____ month(s)) which expired on _____

☐ A proposed response was received on _____, but it does not constitute a proper response to the final rejection.

(A proper response to a final rejection consists only of: a timely filed amendment which places the application in condition for allowance; a Notice of Appeal; or the filing of a continuing application under 37 CFR 1.62 (PWC).

☐ No response has been received.

☒ Applicant's failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance.

☐ The issue fee (with a Certificate of Mailing or Transmission of _____) was received on _____

☐ The submitted issue fee of \$_____ is insufficient. The issue fee required by 37 CFR 1.16 is \$_____.

☒ The issue fee has not been received.

☐ Applicant's failure to timely file new formal drawings as required in the Notice of Allowability.

☐ Proposed new formal drawings (with a Certificate of Mailing or Transmission of _____) were received on _____.

☐ The proposed new formal drawings filed _____ are not acceptable.

☐ No proposed new formal drawings have been received.

☐ The express abandonment under 37 CFR 1.62(g) in favor of the PWC application filed on _____.

☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

☐ The decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

☐ The reason(s) below:

ABANDONMENT
CONTACT PERSON IS:
TOM HAWKINS
305-8380

FORM PTO-1492 (REV. 10-00)

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EXHIBIT 8 TO O'DOWD DECLARATION

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CHANGE OF CORRESPONDENCE ADDRESS <i>Application</i> Address to: Assistant Commissioner for Patents Washington, D.C. 20231	Application Number	08/750,641
	Filing Date	12/16/96
	First Named Inventor	Sato
	Group Art Unit	2316
	Examiner Name	
	Attorney Docket Number	77792/23

Toyota / Yoshida

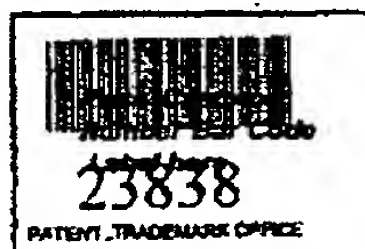
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23838

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Country

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I am the :



Applicant.

Assignee of record of the entire interest.
Certificate under 37 CFR 3.73(b) is enclosed.

Attorney or agent of record.

Typed or
Printed Name

Signature

Date

John C. Atmiller
 John C. Atmiller
 10/2/00

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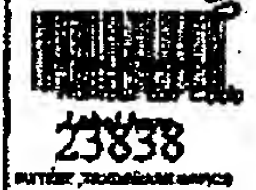
MAR 10 2009



PTO/SB-122 (7-1-05)
Approved for use through 8/30/09. OMB 0551-0223
Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
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CHANGE OF CORRESPONDENCE ADDRESS Application Address to: Assistant Commissioner for Patents Washington, D.C. 20231	Application Number	08/750,641
	Filing Date	12/16/96
	First Named Inventor	SAVO
	Group Art Unit	2316
	Examiner Name	
	Attorney Docket Number	77792/2316

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Address

Address

City State ZIP

Country

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I am the:

☐ Applicant.

☐ Assignee of record of the entire interest.
Certificate under 37 CFR 3.73(b) is enclosed.

☒ Attorney or agent of record.

Typed or Printed Name: John C. Aylmiller

Signature: John C. Aylmiller

Date: 10/2/08

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EXHIBIT 10 TO O'DOWD DECLARATION

PATENT
Docket No. 77792/23

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : Koji SATO, et al.
SERIAL NO. : 08/750,641
FILED : December 16, 1996
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM
GROUP ART UNIT : 2316
EXAMINER : O. Hernandez

Assistant Commissioner for Patents
Washington D.C. 20231

CHANGE OF CORRESPONDENCE ADDRESS

S I R:

Notice is hereby given that the correspondence address in the above-identified application has changed. Please address all future communications regarding this application to:

John C. Altmiller
KENYON & KENYON
1500 K Street, N.W.
Washington, D.C. 20006

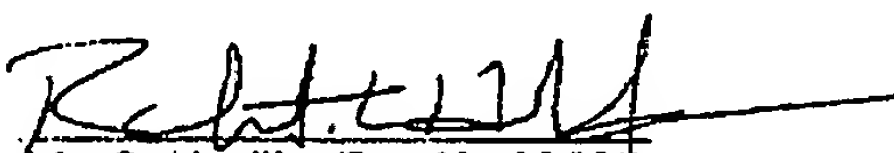
This address change is effective immediately. Thank you.

Respectfully submitted,

KENYON & KENYON

Dated: October 30, 2000

KENYON & KENYON
1500 K Street, N.W., Suite 700
Washington, DC 20005
(202) 220-4200
(202) 220-4201 (fax)


John C. Altmiller (Reg. No. 25,951)
Robert L. Hails, Jr. (Reg. No. 39,702)

DC01 322791 v 1

EXHIBIT 11 TO O'DOWD DECLARATION

FAX KENYON & KENYON DC

(MON) 12:39:00 16:1 T. 16:11/02 4661508829 P 1

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3661 #19

FACSIMILE COVER SHEET

TO: Examiner Olga Hernandez
FAX NO: 703 305-3597
DATE: October 30, 2000
FROM: Robert L. Hails, Jr. (202 220-4235)
SUBJECT: Patent Application S.N. 08/750,641
CLIENT/MATTER NO.: 77792/23
NO. OF PAGES INCLUDING COVER: 2

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GROUP 3600**Official**

Please call (202) 220-4297 if any pages were not received or are illegible.

MESSAGE:

Please enter the enclosed communication in application S.N. 08/750,641.

Regards,

Bob Hails

The information contained in this facsimile is attorney privileged and confidential information intended only for the use of the recipient named above. If you are not the intended recipient, or the person responsible to deliver it to the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone, and return the original and all copies to us at the above address.

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FROM KENYON & KENYON DC

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PATENT
Docket No. 77792/23IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : Koji SATO, et al.
 SERIAL NO. : 08/759,641
 FILED : December 16, 1996
 FOR : SCHEDULE SETTING AND PROCESSING SYSTEM
 GROUP ART UNIT : 2316
 EXAMINER : O. Hernandez

Assistant Commissioner for Patents
 Washington D.C. 20231

Official

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GROUP 3600

CHANGE OF CORRESPONDENCE ADDRESS

S I R:

Notice is hereby given that the correspondence address in the above-identified application has changed. Please address all future communications regarding this application to:


John C. Altmiller
 KENYON & KENYON
 1500 K Street, N.W.
 Washington, D.C. 20006

This address change is effective immediately. Thank you.

Respectfully submitted,

KENYON & KENYON

Dated: October 30, 2000


 John C. Altmiller (Reg. No. 25,951)
 Robert L. Hails, Jr. (Reg. No. 39,702)

KENYON & KENYON
 1500 K Street, N.W., Suite 700
 Washington, DC 20005
 (202) 220-4200
 (202) 220-4201 (fax)

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EXHIBIT 12 TO O'DOWD DECLARATION**RECEIVED
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MAR 10 2009****PATENT
Docket No.: 77792/23****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT :
SERIAL NO. : 08/750641
FILING DATE : December 16, 1996
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM

Commissioner of Patents and Trademarks
Washington D.C. 20231

ASSOCIATE POWER OF ATTORNEY

Sir:

Please recognize John C. Altmiller, (Reg. No. 25,951) and other registered practitioners of Kenyon & Kenyon included in the Customer Number provided below, with full power to prosecute said application, to make alterations and amendments therein, and to transact all business in the Patent and Trademark Office connected therewith.

CUSTOMER NUMBER: 23838

Respectfully submitted,

Date

November 6, 2000

A handwritten signature in cursive script, appearing to read "Edward W. Greason".

Edward W. Greason
Reg. No. 18,918

KENYON & KENYON
One Broadway
New York, NY 10004
(212) 425-7200 (telephone)

DC01 333824 v 1

EXHIBIT 13 TO O'DOWD DECLARATION

CATHY RYAN
KENYON & KENYON

1500 K STREET, N.W., SUITE 500
WASHINGTON, D.C. 20005-1201
PHONE 202 775-4220

1/12/00

DIRECTOR, USPTO
ATTORNEY GENERAL
E-Mail: kenyon@kenyon.com

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anyone ordering this
file. I recommend contacting
the Examiner to see if
they need our file to
rebuild the lost one.

EXHIBIT 14 TO O'DOWD DECLARATION**RECEIVED
CENTRAL FAX CENTER****MAR 10 2009***LAST 1/16/01***PATENT
Docket No. 77792/23****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventors : Koji SATO et al.
Serial No. : 08/750,641
Filed : December 16, 1996
For : SCHEDULE SETTING AND PROCESSING SYSTEM
Examiner : O. Hernandez

Assistant Commissioner of Patents
Washington D.C. 20231

POWER TO INSPECT AND MAKE COPIES

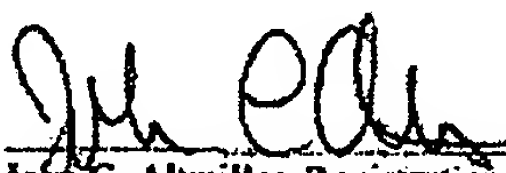
SER:

Denise English and Jay Johnson are hereby authorized to inspect and copy the file for the
above-captioned matter.

Respectfully submitted,

KENYON & KENYON

Date: 2/7/01, 2001


John C. Altmiller, Registration No. 25,951
KENYON & KENYON
1500 K Street, N.W. Suite 700
Washington, D.C. 20005
Telephone: (202) 220-4200
Facsimile: (202) 220-4201

lost 1/16/01

PATENT
Docket No. 77792/23

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Serial

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Date: 2



John C. Altmiller, Registration No. 25,951
KENYON & KENYON
1500 K Street, N.W. Suite 700
Washington, D.C. 20005
Telephone: (202) 220-4200
Facsimile: (202) 220-4201

EXHIBIT 15 TO O'DOWD DECLARATION**RECEIVED
CENTRAL FAX CENTER
MAR 10 2009****PATENT
Docket No.: 77792/23****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT : Koji SATO, et al.
SERIAL NO. : 08/750,641
FILING DATE : December 16, 1996
FOR : SCHEDULE SETTING AND PROCESSING SYSTEM
GROUP ART UNIT : 2316
EXAMINER : O. HERNANDEZ

Assistant Commissioner for Patents
Washington, D.C. 20231

FILE RECONSTRUCTION**SIR:**

We have been informed by the Office that the U.S. Patent and Trademark Office's file for the above-referenced case has been lost. Please find attached a copy of the relevant documents forming the file history for this application from the applicant's files for use in reconstructing the Office's file.

Please reconstruct the file. Thank you for your attention to this matter. Please contact the undersigned at 202-220-4232, for any questions.

Respectfully submitted,



Mark H. Neblett
Reg. No. 42,028

DC01 381129 v 1

The stamp of the Patent Office hereto may be taken as acknowledging the receipt, on the date stamped, of

APPLICANTS: Koji SATO, et al.
SERIAL NO.: 08/750,641
FILED: December, 16, 1996
FOR: *SCHEDULE SETTING AND PROCESSING
SYSTEM*
GROUP ART UNIT: 2316

PAPERS FILED:

1. **File Reconstruction**

MHN/cct

77792/23

3/22/0
1

EXHIBIT 16 TO O'DOWD DECLARATION**RECEIVED
CENTRAL FAX CENTER
MAR 10 2009****PATENT
DOCKET NO.: 77792/23****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANT(S): Koji SATO et al.
SERIAL NO.: 08/750,641
FILED: December 16, 1996
FOR: SCHEDULE SETTING AND PROCESSING SYSTEM
ART UNIT: 2316 **EXAMINER:** O. Hernandez

COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

STATUS INQUIRY**SIR:**


Applicants for the above-cited U.S. application respectfully request that the Examiner inform Applicants of the status of the application. Applicants filed the application on December 16, 1996 and received an official Filing Receipt on March 14, 1997.

The U.S. Patent and Trademark Office notified Applicants that the subject file had been lost and, accordingly, Applicants filed a copy of the relevant documents forming the file history in a File Reconstruction on March 23, 2001.

The Commissioner is authorized to charge any fee relevant to this filing to Kenyon & Kenyon Deposit Account No. 11-0600. A duplicate of this sheet is attached.

Respectfully submitted,

Date: September 8, 2003


John C. Ahmiller
(Reg. No. 25,951)

KENYON & KENYON
1500 K Street, N.W., Suite 700
Washington, DC 20005
Tel: (202) 429-1776
Fax: (202) 429-0796

EXHIBIT 17 TO O'DOWD DECLARATION

The stamp of the Patent Office herein may be taken as acknowledging the receipt, on the date stamped, of

INVENTOR(S): Keji SATO et al.
SERIAL NO.: 08/750,641
FILED: December 16, 1996
TITLE: SCHEDULE SETTING AND PROCESSING SYSTEM
GROUP ART: 2316
EXAMINER: O. Hernandez

PAPERS FILED:

1. Status Inquiry

KCA/Imu

September 5, 2003



77792/23

EXHIBIT 18 TO O'DOWD DECLARATION**RECEIVED
CENTRAL FAX CENTER****MAR 10 2009**

The stamp of the Patent Office hereon may be taken as acknowledging the receipt, on the date stamped, of:

INVENTOR(S): Koji SATO et al.
SERIAL NO.: 08/750,641
FILED: December 16, 1996
TITLE: SCHEDULE SETTING AND PROCESSING SYSTEM
GROUP ART: 2316
EXAMINER: O. Hernandez

PAPERS FILED:

1. Information Disclosure Statement (2 pp.)
2. 1449A/PTO - Info. Disclosure Statement by Applicant
3. Foreign Patent Document - CN 1090666A



WEC/rl

77792/23

November 18, 2003

EXHIBIT 19 TO O'DOWD DECLARATION**RECEIVED
CENTRAL FAX CENTER
MAR 10 2009**

3661
#20/IDS
PATENT
Attorney Docket No. 77792/23 2/13/4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

APPLICANT(s) : Koji SATO, et al.
SERIAL NO. : 08/750,641
FILED : December 1, 1995
FOR : Schedule Setting and Processing System
EXAMINER : O. Hernandez
ART UNIT : 2316

INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**RECEIVED
NOV 24 2003
GROUP 3600**

Sir:

Pursuant to 37 CFR § 1.58, the attention of the Patent and Trademark Office is hereby directed to the reference(s) listed on the attached PTO-1449. Unless otherwise indicated herein, one copy of each reference is attached. It is respectfully requested that the information be expressly considered during the prosecution of this application, and that the reference(s) be made of record therein and appear among the "References Cited" on any patent to issue therefrom. The filing of this Information Disclosure Statement and the enclosed PTO Form No. 1449, shall not be construed as an admission that the information cited is prior art, or is considered to be material to patentability as defined in 37 C.F.R. § 1.58(b). It is believed that no fees are due, but

EXHIBIT 20 TO O'DOWD DECLARATION

The stamp of the Patent Office hereon may be taken as acknowledging the receipt, on the date stamped, of

INVENTORS: Koji SATO, et al.

SERIAL NO. : 08/750,641

FILED : 1 December 1995



Enclosed: INFORMATION DISCLOSURE STATEMENT, FORM
PTO-1449, SEVEN REFS., EP SEARCH REPORT

WEC/is

77792/23

09/09/04

EXHIBIT 21 TO O'DOWD DECLARATIONRECEIVED
CENTRAL FAX CENTER

MAR 10 2009



PATENT

Docket No. 77792/23

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : Koji SATO, et al.
 SERIAL NO. : 08/750,641
 FILED : 1 December 1995
 FOR : SCHEDULE SETTING AND PROCESSING SYSTEM
 GROUP ART UNIT : 2316
 EXAMINER : O. Hernandez

COMMISSIONER FOR PATENTS
 P. O. Box 1450
 Alexandria, Virginia 22313-1450

 RECEIVED
 SEP 15 2004
 GROUP 3600

INFORMATION DISCLOSURE STATEMENT
UNDER 37 C.F.R. § 1.97 & § 1.98

SIR:

In conformance with Applicants' duty of disclosure under 37 C.F.R. § 1.56 and § 1.97(c)(1), the references listed on the attached form PTO-1449 are hereby brought to the Examiner's attention.

In compliance with 37 C.F.R. § 1.98, copies of the references are submitted herewith.

Statement of Relevancy

The references were cited in the European Search Report of a related European Patent Application. A copy of the Search Report is enclosed.

Statement Pursuant to 37 C.F.R. 1.97(a)(1)

The undersigned attorney hereby states that each item of information contained in this information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement.

EXHIBIT 22 TO O'DOWD DECLARATION**RECEIVED
CENTRAL FAX CENTER****MAR 10 2009****PATENT**
Docket No. 77792/23**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventors : Koji SATO, et al.
Serial No. : 08/750,641
Filed : 16 December 1996
For : SCHEDULE SETTING AND PROCESSING SYSTEM
Group Art : 2316
Examiner : O. Hernandez

COMMISSIONER FOR PATENTS
P. O. Box 1450
Alexandria, Virginia 22313-1450

REQUEST FOR STATUS

S I R:

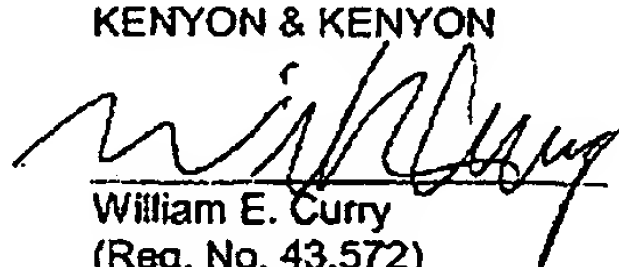
A request for continued prosecution with an Information Disclosure Statement was filed in this case on 15 March 2000. A preliminary amendment was faxed to the Examiner on 29 March 2000. A change of correspondence address was filed on 30 October 2000. Thereafter, a copy of the entire file was submitted for re-construction of the lost file on 23 March 2001. A status inquiry was filed on 8 September 2003. Information Disclosure Statements were filed on 18 November 2003 and 9 September 2004, respectively.

It is respectfully requested that the undersigned be informed when an Office Action or other communication from the Patent Office may be expected in this case.

Respectfully submitted,

KENYON & KENYON

Dated: 15 September 2004


William E. Curry
(Reg. No. 43,572)

1500 K Street, N.W., Suite 700
Washington, DC 20005
Tel: (202) 220-4200
Fax: (202) 220-4201
505235

The stamp of the Patent Office hereon may be taken as acknowledging the receipt,
on the date stamped, of

Inventor(s): Koji SATO, et al.
Serial No.: 08/750,641
Filed: 16 December 1996



Enclosed:

REQUEST FOR STATUS

WEC/is

77792/23

09/15/04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**RECEIVED
CENTRAL FAX CENTER
MAR 10 2009**

Applicant : Koji SATO, et al.
Application No. 08/750,641
Filing Date : 16 December 1996
Title : SCHEDULE SETTING AND PROCESSING SYSTEM
Art Unit : Office of Petitions
Examiner : L. Walsh

**Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

**DECLARATION OF
DANIEL G. SHANLEY**

I, the undersigned, Daniel G. Shanley, make this declaration in support of the Renewed Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR § 1.137(b) for the above identified application.

1. From about January 9, 2006, I have been an associate of Kenyon & Kenyon LLP ("Kenyon") in Kenyon's Washington, DC office.
2. At Kenyon, I primarily prosecute patent applications in the mechanical and electrical arts, including prosecuting patent applications for Toyota Jidosha Kabushiki Kaisha ("Toyota"), the assignee of U.S. Patent Application Serial No. 08/750,641 ("641").
3. Shawn W. O'Dowd, a partner at Kenyon, is the supervising partner for most of the applications I prosecute for Toyota.
4. As of July 10, 2008, I was not docketed as a responsible attorney for '641, and to my knowledge, had no prior involvement with that case. On or about September 15, 2008, I was formally docketed as a responsible attorney for '641.
5. On July 10, 2008, presumably because I regularly assist with Toyota applications, I was forwarded a communication from Toyota's Japanese counsel inquiring as to the status of the

'641 application. The communication was addressed to William Curry, a former Kenyon employee. On that day, I replied to Toyota's Japanese counsel, indicating that Kenyon would look into the matter.

6. On July 10, 2008, I asked my assistant, Ingrid Hodge, to inquire as to the status of '641 immediately.

7. Later in the day on July 10, 2008, I learned from Ingrid Hodge for the first time that '641 may be abandoned.

8. I then asked Ingrid Hodge to obtain a partial file wrapper from the USPTO, so as to confirm that the '641 application had in fact abandoned.

9. On or about July 13, 2008, based on my review of a copy of USPTO's filewrapper for '641, I first gained actual knowledge that '641 had become abandoned.

10. On or about July 14, 2008, I reported my findings regarding the status of '641 to Toyota's Japanese counsel.

11. On or about July 23, 2008, Toyota's Japanese counsel directed Kenyon to file a petition to revive '641. At or about this time, Shawn W. O'Dowd took over primary responsibility for the '641 application.

12. I had no significant involvement with the filing of a petition to revive '641, other than providing information relevant to the preparation of this declaration.

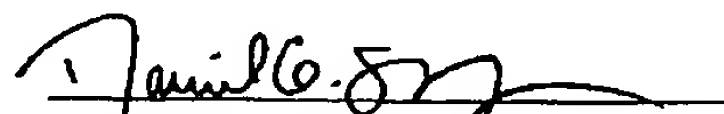
13. Prior to July 10, 2008, I do not recall the Office or anyone at Kenyon advising me that '641 had been abandoned.

14. To my knowledge and belief, the entire delay in filing the required reply for '641 from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

I declare that all of the above statements made based on my own knowledge are true and that all of the above statements that were made on information and belief are believed to be true,

and further declare that these statements are made with the knowledge that knowing, willful and materially false statements, as are defined under Section 1001 of Title 18 of the United States Code, are punishable by fine, imprisonment, or both under Section 1001, and that such statements may affect the validity of the any patent issuing from '641 if the application is revived.

Dated: 10 December 2008


Daniel G. Shanley

RECEIVED
CENTRAL FAX CENTER

MAR 10 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Koji SATO, et al.
Application No. : 08/750,641
Filing Date : 16 December 1996
Title : SCHEDULE SETTING AND PROCESSING SYSTEM
Art Unit : Office of Petitions
Examiner : L. Walsh

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**DECLARATION OF
INGRID HODGE**

I, the undersigned, Ingrid Hodge, make this declaration in support of the Renewed Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR § 1.137(b) for the above identified application.

1. From about August 31, 1999, I have been an employee at Kenyon & Kenyon LLP ("Kenyon") in Kenyon's Washington, DC office.
2. At Kenyon, I am a secretary who assists several attorneys in various intellectual property matters. I frequently assist Daniel Shanley, an associate at Kenyon, with various patent prosecution matters, including patent prosecutions for Toyota Jidosha Kabushiki Kaisha ("Toyota"), the assignee of U.S. Patent Application Serial No. 08/750,641 ("641").
3. As of July 10, 2008, to my knowledge and belief, I had had no prior involvement with '641.
4. On July 10, 2008, I was asked by Daniel Shanley to inquire as to the status of '641.
5. On July 10, 2008, I first learned of the abandoned status of '641 from the USPTO. I was told by Ms. Barr of the Office of Petitions that '641 had abandoned. According to my notes,

Ms. Barr suggested that a "Petition to withdrawing of the holding of Abandonment" be filed along with "docket records, etc." My notes are attached as Exhibit 1 to this declaration.

6. I then consulted Daniel Shanley and Judith Russo regarding '641. I was instructed to obtain a partial file wrapper of '641 from the USPTO, starting with the final office action mailed November 23, 1999, so as to confirm that '641 had in fact abandoned. On July 10, 2008, I sent an e-mail to Ondrea Lugo requesting this partial file wrapper. This e-mail is attached as Exhibit 2 to this declaration.

7. Prior to July 10, 2008, I do not recall the Office or anyone at Kenyon advising me that '641 had been abandoned.

8. To my knowledge and belief, the entire delay in filing the required reply for '641 from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

I declare that all of the above statements made based on my own knowledge are true and that all of the above statements that were made on information and belief are believed to be true, and further declare that these statements are made with the knowledge that knowing, willful and materially false statements, as are defined under Section 1001 of Title 18 of the United States Code, are punishable by fine, imprisonment, or both under Section 1001, and that such statements may affect the validity of the any patent issuing from '641 if the application is revived.

Dated: December 10, 2008

Ingrid Hodge
Ingrid Hodge

EXHIBIT 2 TO HODGE DECLARATION

Page 1 of 1

Hodge, Ingrid

From: Hodge, Ingrid
Sent: Thursday, July 10, 2009 2:43 PM
To: Lugo, Ondrea
Subject: 7778223 File Wrapper Request

Ondrea,

We need a copy of the file wrapper starting with the First Office Action mailed November 22, 1998 for the following file:

U.S. Patent Serial No. 08/750,541 (filed December 19, 1998)

We do not need anything prior to the First Office Action mailed November 22, 1998.

Please let me know if you need anything else and how soon we can expect the copies.

Thanks,
Ingrid

EXHIBIT 1 TO HODGE DECLARATION

moved to K Street
house 1999

08/750, 64

01/23/99	For
02/25/00	Advisory Action
03/15/00	CPA + 105
09/13/00	"Notice of Abandonment" case was abandoned for failure to pay
10/30/00	Change of Correspondence Address <u>7</u> <u>Wine Fee</u>
01/06/00	Attest. Power of Attorney
03/22/01	File Reconstitution - case was lost at PTD
09/08/03	Status Inquiry
11/18/03	105
09/15/04	Status Inquiry
07/10/08	Office of Patents (Mr. Barr) Tel: 571-272-3282
⇒	File Petition of the Abandonment of Abandonment
	→ docket records, etc